# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

## ADVERSE POSSESSION

**POSSESSION.** The plaintiff sought to acquire title by adverse possession of a strip of land between the plaintiff's farm and the defendant's farm. The plaintiff attempted to show the boundary of the disputed land through historical aerial photographs and testimony of witnesses familiar with the land. At one time a road covered the strip and a fence was erected on the plaintiff's side of the strip but both were removed. Some photographs showed the road, some showed the fence and some showed neither feature. The testimony of the witnesses was equivocal in that the witnesses failed to identify the same strip in different photographs of the land over time. Even the plaintiff failed to clearly identify the strip in several photographs because the strip was plowed. The trial court dismissed the case because the plaintiff failed to clearly show the location of the strip during any time in which adverse possession was claimed. **Case v. Burton, 2012 Or. App. LEXIS 624 (Or. Ct. App. 2012)**.

## ANIMALS

**COW**. The plaintiff was injured when the plaintiff's motorcycle was struck by a cow on a private road over land owned by the defendant. The defendant also owned the cow. The road was on an easement granted to owners of land-locked properties. The road was not protected by a fence and the plaintiff alleged that the cow charged at the plaintiff while the plaintiff was stopped on the road. The plaintiff sued in negligence and premises liability for failure to warn about the dangerous condition of cows not in a fenced area. The court held that the defendant was not liable as an owner of the road because the road was owned by the easement holders. The court also held that the plaintiff failed to show that the defendant had any knowledge of any dangerous propensity of the cow to charge vehicles or people. The court also held that the failure of the defendant to fence in the cows was not negligence because the defendant had no duty to keep the easement road clear. **Thomas v. Stenberg, 2012 Cal. App. LEXIS 631 (Calif. Ct. App. 2012)**.

**HORSES.** The plaintiff was injured while moving the defendant's horse to a pasture for grazing. The plaintiff was hired by the defendant to care for the horse, including feeding, cleaning and pasturing the horse. The horse had been adopted from a horse rescue organization which had acquired the horse from an owner who had mistreated the horse by failing to properly feed the horse. In addition, just before the defendant started caring for the horse, the horse was gelded. The defendant claimed that the plaintiff did not inform the defendant that the horse was a rescue horse nor that the horse was recently gelded. The plaintiff was kicked by the horse while the horse was being walked to a pasture. The defendant sought and was granted summary judgment under the Texas Equine Act, Tex. Civ. Prac. & Rem. Code § 87.003, because the injury was the result of a risk inherent in the handling of horses. The plaintiff argued that the act did not apply because the plaintiff was not a consumer of an equine activity. The court held that the act did not apply only to consumers of equine activities. The plaintiff also argued that the act did not apply because the plaintiff was an employee of the defendant. The court held that, because the plaintiff had sufficient control over the method of care of the horse and was hired by others to care for their horses, the plaintiff was an independent contractor subject to the act. The plaintiff also argued that an exception in the act applied because the defendant failed to properly assess the plaintiff's ability to care for the horse. The court held that the plaintiff's own advertising claimed expertise and knowledge of horses such that a careful assessment was not required. Finally, the plaintiff argued that the act did not apply because the defendant failed to inform the plaintiff about the mistreatment of the horse and the gelding. The court held that the plaintiff held out to be an expert at handling horses and failed to show that such information was needed to properly care for the horse. **Young v. McKim, 2012 Tex. App. LEXIS 4317 (Tex. Ct. App. 2012)**.

## BANKRUPTCY

### CHAPTER 12

**LIEN AVOIDANCE.** The debtor borrowed money from a creditor and granted the creditor a lien and deed of trust in 47.84 acres of land. The note was renewed, extended and increased one year later but only 23.1 acres of the same land was covered by the deed of trust. The second deed of trust was recorded. A year later the creditor executed a release of the lien on the 47.84 acres. The Chapter 12 trustee sought to avoid the lien, arguing that the release of the 47.84 acre lien also released the 23.1 acre lien. The creditor argued that only the Chapter 12 debtor had the power to avoid liens. The court agreed, noting that a Chapter 12 trustee's duties were specifically described in Section 1202 and that the trustee's powers could be increased to include lien avoidance only upon request or upon removal of the debtor as debtor-in-possession. Since the debtor was still in possession and no request had been made by the trustee for lien avoidance powers, the trustee could not bring an action to avoid the lien. ***In re* Colvin, 2012 Bankr. LEXIS 2280 (Bankr. W.D. Tex. 2012)**.

### FEDERAL TAX

**DISCHARGE**. The debtor failed to timely file tax returns for 2001 and 2002. The IRS assessed taxes for 2001 in 2004 and for 2002 in 2005. A Notice of Intent to Levy was filed in July 2006. The debtor filed the 2001 and 2002 returns in August 2006 and the IRS abated the assessments for 2001 and 2002 by $48,000 and $35,000. The debtor filed for Chapter 7 in 2011 and sought to have the 2001 and 2002 taxes declared dischargeable because the tax returns were filed more than two years before the bankruptcy petition. The court noted substantial authority in holding that a return filed after the IRS makes an assessment based on a deficiency notice does not qualify as a return for purposes of Section 523(a). Therefore, the 2001 and 2002 taxes were nondischargeable because no return was filed. The court noted that an untimely filed return may still qualify as a return for Section 523(a) purposes if the return is filed prior to an assessment by the IRS. ***In re*** **Casano, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,351 (Bankr. N.D. N.Y. 2012)**.

**SALE OF CHAPTER 12 ESTATE PROPERTY.** The U.S. Supreme Court has denied certiorari in the following case. The holding in this case is consistent with the U.S. Supreme Court decision *Hall, et ux. v. United States, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,345 (S. Ct. 2012); 2012 U.S. LEXIS 3781 (S. Ct. 2012)*, discussed in Harl and Peiffer, "The U.S. Supreme Court Settles (for Now) One of the Chapter 12 Bankruptcy Tax Issues," 23 *Agric. L. Dig.* 81 (2012). The Chapter 12 debtor's plan provided for payment of federal taxes by surrendering to the IRS eight parcels of land. The plan also provided that all federal and state tax claims which arose from the transfer of the property to the IRS were treated as general unsecured claims not entitled to priority under Section 507. The eight parcels were sold, resulting in substantial taxable capital gains tax. The debtor argued that, under Section 1222(a)(2)(A), the capital gains tax was a claim of the Chapter 12 estate. The IRS argued that Section 1222(a)(2)(A) did not apply to post-petition sales of the debtor's property. The Bankruptcy Court and the District Court reviewed the three cases which had ruled on the issue, *In re Knudsen, 356 B.R. 480 (Bankr. N.D. Iowa 2006), aff'd, 389 B.R. 643, 680-81 (N.D. Iowa 2008), aff'd, 581 F.3d 696 (8th Cir. 2009)* (ruled for debtor)*; In re Hall, 376 B.R. 741 (Bankr. D. Ariz. 2007), rev'd, 393 B.R. 857, 862 (D. Ariz. 2008)* (ruled for debtor on appeal)*;* and *In re Schilke, 379 B.R. 899 (Bankr. D. Neb. 2007), aff'd, 2008 U.S. Dist. LEXIS 68176 (D. Neb. 2008), aff'd, 581 F.3d 696 (8th Cir. 2009)* (ruled for debtor), and followed them in holding that capital gains taxes resulting from post-petition sales of a Chapter 12 debtor's property were administrative expenses entitled to application of Section 1222(a)(2)(A). On appeal the appellate court reversed, holding that, because no taxable estate was created in Chapter 12, the taxes from the sale of the debtor's property were not a claim against the estate. ***In re*** **Dawes, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,454 (10th Cir. 2011), *rev'g*, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,280 (D. Kan. 2009), *aff'g*, 2008 Bankr. LEXIS 362 (Bankr. D. Kan. 2008)**.

# FEDERAL FARM PROGRAMS

**NO ITEMS.**

# FEDERAL ESTATE AND GIFT TAXATION

**TRANSFEREE LIABILITY**. The decedent's will passed property to a trust for the decedent's children. Two of the children were the trustees. The estate had significant estate tax liability and the estate elected installment payment of the estate tax. The trust and beneficiaries agreed to a distribution of all trust corpus to the beneficiaries and the parties signed an agreement to be liable for any estate tax not paid by the estate. The trust property was mostly stock in one corporation and the corporation went bankrupt before the estate tax was fully paid, resulting in almost no funds for the heirs. The IRS sought to hold the heirs liable for the unpaid estate tax. The court held that the heirs were not liable as beneficiaries because they did not receive property directly from the estate. However, the trustees were personally liable as fiduciaries as fiduciaries, under 37 U.S.C. § 3713. **United States v. Johnson, 2012-1 U.S. Tax Cas. (CCH) ¶ 60,646 (D. Utah 2012)**.

# FEDERAL INCOME TAXATION

**BUSINESS EXPENSES**. The taxpayer was engaged in several business activities over several years and failed to file income tax returns or pay any taxes for those years. The IRS constructed substitute returns using the taxpayer's bank accounts but allowed deductions only for the personal deduction and exemption amount. The taxpayer claimed to have significant business expenses such that the taxpayer claimed no taxable income for the years involved. However, the court held that the business expenses were properly disallowed for lack of substantiation. **Schoppe v. Comm'r, T.C. Memo. 2012-153**.

**C CORPORATIONS**.

DIVIDENDS. The taxpayer was a professional accountant corporation with three main shareholder-founders. Each of these shareholders had formed an independent entity to which the taxpayer paid all of the taxable income each year such that the taxpayer had no corporate taxable income. The taxpayer characterized the payments as consulting fees. The IRS recharacterized the payments as dividends. The court agreed, noting that the taxpayer did not withhold payroll taxes or report the payments as employee or nonemployee compensation, disclose them on the officers' compensation schedule on its Form 1120 or keep records that matched the fees to work performed by each shareholder. The court held that the payments also violated the independent investor test because no investor would agree to zero return with such high payments to the taxpayer's employees. **Mulcahy, Pauritsch, Salvador & Co.,**

**Ltd. v. Comm'r, 2012-1 U.S. Tax Cas. (CCH) ¶ 50,349 (7th Cir. 2012),** ***aff'g*****, T.C. Memo. 2011-74**.

**CHARITABLE DEDUCTION**. The taxpayers, husband and wife, created a charitable remainder unitrust and contributed five pieces of real property to the trust. The husband, a real estate agent and appraiser, filled out Form 8283, *Noncash Charitable Contributions*, but failed to attach an independent appraisal of the properties. The values entered on the form were determined by the husband, who was a qualified appraiser. The husband also attached additional information about the properties but failed to declare any income tax basis for the properties. During an audit, the taxpayers hired appraisers to value the properties. In addition, several of the properties were sold by the trust for prices similar or much more than the values declared on Form 8283. The IRS disallowed the charitable deduction for the properties because of the failure to provide an independent appraisal with From 8283. The court agreed, noting that a qualified appraisal, completed by someone other than the taxpayer, was an essential requirement for a charitable deduction for gifts of property. **Mohamed v. Comm'r, T.C. Memo. 2012-152**.

**DEPRECIATION**. The taxpayer placed qualified property in service during the tax year. The taxpayer hired a professional tax return preparer to prepare the tax return for that year and the preparer included an election to forego the additional first year depreciation for that property because the taxpayer had made that election in prior tax years. The taxpayer claimed that the election was made in error for this tax year and sought permission to revoke the election. The IRS granted the taxpayer 60 days to file an amended return with a letter revoking the election. **Ltr. Rul. 201220013, Feb. 13, 2012**.

**DISCHARGE OF INDEBTEDNESS**. The taxpayer owed money to a credit card company and defaulted on the loan in 1996. In 2007, another company acquired the credit card account and started attempts to collect the debt. The taxpayer demanded that the company cease collection efforts because the statute of limitations had expired on collection of the debt in 2001. The company issued Form 1099-C, *Cancellation of Debt* showing discharge of indebtedness income for 2008. The court noted that a presumption of discharge occurs in a taxable year if no payments were made during the previous 36 months. However, the presumption can be removed if "significant, bona fide collection activity" occurs or the debt was sold to another collector. The court held that the debt was discharged in 1999 at the end of the 36 months after the taxpayer stopped payments. Although the debt was later sold, the date of the sale was not clear and the resulting owner of the debt did not engage in significant, bona fide activity to collect the debt within the 36 month presumption period. **Stewart v. Comm'r, T.C. Summary Op. 2012-46**.

**EMPLOYEE BENEFITS**. The employer provided plastic smartcards or debit cards which could be used to purchase transportation on public transportation (unspecified in the ruling). The IRS ruled that the amounts on the cards were excludible from the employees' wages as a qualified transportation fringe benefit if the employer has a means of verifying the use of the cards only for transportation or the cards could be used to purchase transportation. If the cards can be used for non-transportation purposes and their use cannot be verified, the value of the cards is wages to the employees. *Rev. Rul. 2006-57, 2006-2 C.B. 911*. This ruling became effective January 1, 2012. The IRS is requesting public comments on the ruling to determine whether new developments in technology may affect the ruling. **Notice 2012-38, I.R.B. 2012-24**.

**FIRST-TIME HOMEBUYER CREDIT**. The taxpayers, husband and wife, formed a limited liability company with their four minor children and funded the company with real estate which was sold. The proceeds were placed in the LLC's bank account. The LLC used the funds to purchase a residence used by the taxpayers who did not pay rent to the LLC but who paid maintenance, taxes and other expenses on the residence. The taxpayers claimed the first-time homebuyer credit for the purchase of the residence but used the name of the LLC as the taxpayer on Form 5405, *First-Time Homebuyer Credit*. The taxpayers argued that the term "individual" in I.R.C. § 36 includes LLCs. The court noted that the term "individual" is not defined in I.R.C. § 36; thus, the court looked to use of the term generally in the I.R.C. and in particular in I.R.C. § 36. The court held that the term "individual" refers only to natural persons and does not include enetities such as LLCs. **Rospond v. Comm'r, T.C. Summary Op. 2012-47**.

The taxpayers, husband and wife, formed an S corporation which owned and rented real estate in several states. The taxpayers rented a home in California for several years before purchasing a residence in Nevada. The corporation paid for most of the purchase price, with the taxpayers paying the rest, and the corporation was the title holder of the property. The taxpayers claimed the first-time homebuyer credit for the new home. The court held that an S corporation was not an individual for purposes of the homebuyer credit; therefore, the S corporation could not receive the credit. In addition, the taxpayers could not claim the credit because the property was purchased by a separate tax entity, the S corporation. **Trugman v. Comm'r, 138 T.C. No. 22 (2012)**.

**HEALTH INSURANCE PREMIUM CREDIT**. The IRS has adopted as final regulations which provide guidance to individuals who enroll in qualified health plans through health insurance exchanges and claim the health insurance premium tax credit and to exchanges that provide qualified health plans to individuals and employers. **77 Fed. Reg. 30377 (May 23, 2012)**.

**LEASEHOLD IMPROVEMENTS**. The taxpayer entered into a sublease and construction agreement under which the taxpayer agreed to construct the real property and improvements and lessor agreed to help fund the construction costs. Under the agreement the lessor would own all of the real property and most of the improvements constructed and the taxpayer would own all the personal property and some of the real property improvements constructed. The taxpayer agreed to incur various indirect costs associated with the construction and the agreement provided that these costs were not a substitute for rent. After the construction, the taxpayer leased the property from the lessor. In a Chief counsel

Advice letter, the IRS ruled that the costs incurred by the taxpayer associated with the construction of the leased property owned by the lessor were required to be capitalized by the taxpayer as leasehold improvements under I.R.C. § 263(a) and Treas. Reg. §1.162-11(b), and could not be capitalized under I.R.C. § 263A as to the basis of the property produced and owned by the taxpayer. **CCA 201220028, Feb. 6, 2012**.

**LIMITED LIABILITY COMPANY**. The taxpayer was a limited liability company and conducted a transaction that included a stock purchase. The taxpayer intended that the stock purchase constitute a qualified stock purchase within the meaning of I.R.C. § 338(d)(3). However, in order to achieve this intended result, it was necessary that the taxpayer be classified as a corporation for federal tax purposes, but the taxpayer failed to timely file Form 8832, *Entity Classification Election*, with the appropriate service center. The IRS granted the taxpayer an extension of time to file Form 8832. **Ltr. Rul. 201221005, Feb. 10, 2012**.

**PARTNERSHIPS**

DISCHARGE OF INDEBTEDNESS. The taxpayer was a partnership composed of two equal partners, neither of which was a partnership. The taxpayer borrowed money from a bank which was secured by real property purchased with the loan proceeds. The loan was a nonrecourse obligation with neither the partnership nor the partners personally liable for the loan. The bank agreed to reduce the principal on the loan when the value of the property decreased. The partnership has no gain on the note, no other liabilities and no other property. The partnership interests are the only property owned by the partners. The IRS ruled that, for purposes of measuring the insolvency of the partners, the partnership's discharged excess nonrecourse debt is treated as a liability of its partners based upon the COD income allocation of one-half to each partner. Because both partners have no assets other than their interests in the partnership, each partner has a basis of zero in their partnership interests. Thus, upon the discharge of a portion of the partnership loan, each partner is insolvent and eligible for exclusion of each's portion of the partnership's discharge of indebtedness income. See also *Rev. Rul. 92-53, 1992-2 C.B. 48*. **Rev. Rul. 2012-14, I.R.B. 2012-24**.

SMALL PARTNERSHIP EXCEPTION. In a short e-mail Chief Counsel Advice letter, the IRS ruled that a partnership with two partners was not eligible for the small partnership exception because one of the partners was a flow-through entity. However, when the partnership had only one partner, the partnership was not subject to the TEFRA reporting rules because the partnership became a disregarded entity. **CCA 201221019, May 4, 2012**.

**PASSIVE INVESTMENT LOSSES**. The taxpayers, husband and wife, were in a real property business as defined by I.R.C. § 469 and were qualified under I.R.C. § 469(c)(7)(B) to make an election to treat all their interests in rental real estate as a single rental real estate activity. However, the taxpayers inadvertently filed their joint return without the statement required under I.R.C. § 1.469-9(g)(3). The IRS granted the taxpayers an extension of time to file an amended return with the required statement. **Ltr. Rul. 201221012, Feb. 23, 2012**.

**PAYMENT IN-KIND**. The IRS has issued proposed amendments to Treas. Reg. §1.83-3(c)(1) to add the word "only" to the phrase "[a] substantial risk of forfeiture exists [only] where. . ." to clarify that a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer. The proposed regulations would also amend the second sentence of Treas. Reg. §1.83-3(c)(1) to delete the clause "...if such condition is not satisfied" to clarify that, when 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. The proposed regulations would also amend Treas. Reg. §1.83-3(c)(1) to add a sentence stating that a transfer restriction, including a transfer restriction that carries the potential for forfeiture or disgorgement of some or all of the property or other penalties if the restriction is violated, does not create a substantial risk of forfeiture. This addition incorporates the holding in *Rev. Rul. 2005-48, 2005-2 C.B. 259*. **77 Fed. Reg. 31783 (May 30, 2012)**.

**QUARTERLY INTEREST RATE**. The IRS has announced that, for the period July 1, 2012 through September 30, 2012, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 0.5 percent. **Rev. Rul. 2012-16, I.R.B. 2012-26.**

**SALE OF RESIDENCE.** The taxpayers, husband and wife, purchased a residence in 1998 and sold it in 2010. They received money from the purchaser and a third party. The ruling does not explain the reason for the third party payment. The IRS ruled that both payments must be included in the amount realized on the property for purposes of determining the amount of gain received in the transaction for purposes of the I.R.C. § 121 exclusion of gain on the sale of a residence. **Ltr. Rul. 201221004, Feb. 22, 2012**.

**TRUSTS.** The taxpayers asserted that the Social Security Administration created trusts in their names with each of them as trustee for the benefit of the U.S. government. They each provided a nearly identical instrument entitled "Simple Social Security Trust." Each trust instrument stated that it was created when the SSA issued social security cards in each of the taxpayers' names. The instruments also state that the taxpayers were "Stewards in the Kingdom of Israel" that provide "the consciousness and physical capacity" for the trusts. After making FICA payments, any net income may be held, invested, used as fiduciary fees, or distributed to its "Steward." In a Chief Counsel Advice letter, the IRS ruled that the trusts were sham trusts and refused to issue any ruling as to the validity or effect of the trusts. **CCA 201220027, Feb. 7, 2012**.

# STATE TAXATION OF AGRICULTURE

**AGRICULTURE USE.** The plaintiffs owned a 13 acre farm,of which one acre was devoted to the residence and 12 acres was fenced for rotational pasturing of horses. In 2007, the plaintiffs began construction of a horse barn with the intent to start a horse boarding operation. The barn was not complete at the time of the case hearing, although the plaintiffs claimed that one horse was boarded under contract. In 2009 the county changed the assessment of the property from agricultural homestead to residential homestead because no agricultural products were produced on the land in 2008. The plaintiffs argued that the classification should not have been changed because the business was still in development. The court held that the statute was clear that the agricultural homestead classification required the production of agricultural products on the land in the prior year; therefore, because no hay or pasture was produced in 2008, the property was properly reclassified in 2009. **Kirkeide v. County of Sherburne, 2012 Minn. Tax LEXIS 29 (Minn. Tax. Ct. 2012)**.

# WORKERS' COMPENSATION

**SCOPE OF EMPLOYMENT**. The plaintiff was employed as a groom at a horse stable in Kentucky. The employer made a trip to New York to sell some horses and had the plaintiff ride in the trailer with the horses. The plaintiff helped show the horses at the sale and when the sale was over, the plaintiff asked permission to stay at the sale barn for a while to work at showing horses for other owners. When that work was done, the plaintiff found a ride back to Kentucky to resume work but was injured in an accident along the way. The employer challenged the plaintiff's workers' compensation claim, arguing that the travel back to Kentucky was not within the scope of employment. The court held that the return trip to Kentucky was a necessary and inevitable part of the employment which took the plaintiff to New York. **Gaines Gentry Thoroughbreds v. Mandujano, 2012 Ky. LEXIS 67 (Ky. 2012)**.

# IN THE NEWS

**OFFERS IN COMPROMISE**. The IRS has announced another expansion of its "Fresh Start" initiative by offering more flexible terms to its Offer in Compromise (OIC) program that will enable some of the most financially distressed taxpayers to clear up their tax problems and in many cases more quickly than in the past. "This phase of Fresh Start will assist some taxpayers who have faced the most financial hardship in recent years," said IRS Commissioner Doug Shulman. "It is part of our multiyear effort to help taxpayers who are struggling to make ends meet." The announcement focuses on the financial analysis used to determine which taxpayers qualify for an OIC and enables some taxpayers to resolve their tax problems in as little as two years compared to four or five years in the past. In certain circumstances, the changes announced today include: (1) revising the calculation for the taxpayer's future income; (2) allowing taxpayers to repay their student loans; (3) allowing taxpayers to pay state and local delinquent taxes, and (4) expanding the Allowable Living Expense allowance category and amount. In general, an OIC is an agreement between a taxpayer and the IRS that settles the taxpayer's tax liabilities for less than the full amount owed. The IRS stated that an OIC is generally not accepted if the IRS believes the liability can be paid in full as a lump sum or through a payment agreement. The IRS looks at the taxpayer's income and assets to make a determination of the taxpayer's reasonable collection potential. OICs are subject to acceptance on legal requirements. The IRS recognizes that many taxpayers are still struggling to pay their bills so the agency has been working to put in place common-sense changes to the OIC program to more closely reflect real-world situations. When the IRS calculates a taxpayer's reasonable collection potential, it will now look at only one year of future income for offers paid in five or fewer months, down from four years, and two years of future income for offers paid in six to 24 months, down from five years. All offers must be fully paid within 24 months of the date the offer is accepted. The Form 656-B, *Offer in Compromise Booklet*, and Form 656, *Offer in Compromise*, have been revised to reflect the changes. Other changes to the program include narrowed parameters and clarification of when a dissipated asset will be included in the calculation of reasonable collection potential. In addition, equity in income producing assets generally will not be included in the calculation of reasonable collection potential for on-going businesses.

*Allowable Living Expenses*

The Allowable Living Expense standards are used in cases requiring financial analysis to determine a taxpayer's ability to pay. The standard allowances provide consistency and fairness in collection determinations by incorporating average expenditures for basic necessities for citizens in similar geographic areas. These standards are used when evaluating installment agreement and offer in compromise requests. The National Standard miscellaneous allowance has been expanded to include additional items. Taxpayers can use the miscellaneous allowance for expenses such as credit card payments and bank fees and charges. Guidance has also been clarified to allow payments for loans guaranteed by the federal government for the taxpayer's post-high school education. In addition, payments for delinquent state and local taxes may be allowed based on a percentage basis of tax owed to the state and IRS. **IR-2012-53**.

**IRS TAX FORUMS**. The IRS has announced the schedules for the 2012 IRS Nationwide Tax Forums, three-day events presented by IRS experts and partner organizations that offer up-to-date information on federal and state tax issues. The forums are to be held June through August in Orlando, Atlanta, San Diego, Las Vegas, Chicago and New York. **Special Edition Tax Tip 2012-09**.

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# AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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The topics include:

**First day**

## FARM INCOME TAX

**New Legislation**

**Reporting Farm Income**
- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures

**Claiming Farm Deductions**
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

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

**Like-Kind Exchanges**
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

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

**Second day**

## FARM ESTATE AND BUSINESS PLANNING

**New Legislation**

**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 unified credit and other credits
- Unified estate and gift tax rates
- Generation skipping transfer tax, including later GST consequences for transfers in 2010
- Federal estate tax liens
- Undervaluations of property
- Reopening an examination

**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

**Limited Partnerships**

**Limited Liability Companies**
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

**The Closely-Held Corporation -**
- 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

**Financing, Estate Planning Aspects and Dissolution of Corporations**
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

**Social Security**
- In-kind wages paid to agricultural labor

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