elderly family members who owned farmland within a city east of San Francisco. The court stated that a 10 percent discount was "more than adequate" to cover reasonable market costs for fractional interests of partitioning of it came to that. The estate had claimed a 40 percent discount which the Tax Court knocked down to 10 percent. The view of the court was obviously shaped by widespread talk about the likelihood of sale of the property inasmuch as it was surrounded by developed areas and was ripe itself for development. The lesson from that case is: if you anticipate trying to obtain a discount, my conclusion is do not utter a word about sale.

Discounts for art collections

Until recently, discounts for art collections were relatively modest, around five percent.[15] However, in a 2013 decision in the Fifth Circuit Court of Appeals, *Estate of Elkins v. Commissioner*,[16] the appellate court allowed a 44.75 percent discount for an undivided interest for a lengthy list of art works owned in co-ownership by the decedent, ostensibly because the decedent's children would likely purchase any fractional interest sold. The Internal Revenue Service had argued in that case that no discount should be allowed from the *pro rata* fair market value of the decedent's interest. However, the appellate court was impressed by the taxpayers' argument that there is no "recognized" market for fractional interests in art and the art in question had been voluntarily subjected to restraints on partition (and alienation) as well as restraints on possession.

Will the Fifth Circuit Court of Appeals in *Elkins v. Commissioner,*[17] chart the course for art collections going forward? The Fifth Circuit Court of Appeals has earned the distinction of being the "most taxpayer friendly" circuit court in the country. But it will require additional cases before it can be said that the *Elkins* view will prevail widely.

ENDNOTES

[1] See 5 Harl, *Agricultural Law* § 43[02[1][c] (2017).

[2] Propstra v. United States, 680 F.2d 1248 (9th Cir. 1982).

[3] See Estate of Pudim v. Comm'r, T.C. Memo. 1982-606; Estate of Clapp v. Comm'r, T.C. Memo. 1983-721; Estate of McMullen v. Comm'r, T.C. Memo. 1988-500 (value of decedent's undivided interest in trust property could not be discounted as fractional share where trust property to be sold as entire fee simple interest).

[4] See Youle v. Comm'r, T.C. Memo. 1989-138.

[5] *Id*.

[6] E.g. Estate of Cervin, T.C. Memo. 1994-550, *reversed on another issue,* 111 F. 3d 1252, (5th Cir. 1997) (20 percent discount allowed for a 50 percent interest in farm and homestead). See Estate of Wildman v. Comm'r, T.C. Memo. 1989-667 (decedent's 20 percent interest in farmland discounted a total of 40 percent for a minority interest and for restrictions on transferability).

[7] 84 F.3d 196 (5th Cir. 1996).

[8] 658 F.2d 999 (5th Cir. 1981).

[9] 680 F.2d 1248 (9th Cir. 1982).

[10] 839 F.2d 1249 (7th Cir. 1988) (voting and non-voting stock placed in separate trusts).

[11] See Ltr Rul. 9336002, May 28, 1993); Ltr. Rul. 9943003, June 7, 1999 (discount is a matter of fact).

[12] Estate of Baird v. Comm'r, 416 F.3d 442 (5th Cir. 2005).

[13] T.C. Memo. 1999-424.

[14] T.C. Memo. 2000-3.

[15] E.g., Stone v. United States, 2007-2 U.S.Tax Cas. (CCH) ¶ 60,545 (N.D. Calif. 2007*), aff'd*, 2009-1 U.S. Tax Cas. (CCH) ¶ 60,572 (9th Cir. 2009).

[16] 2014-2 U.S.Tax Cas. (CCH) ¶ 60,683 (5th Cir. 2014).

[17] *Id*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the attorney hired by the executor failed to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*, before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201710016, Nov. 28, 2016.**

GENERATION-SKIPPING TRANSFERS. The decedent had created an inter vivos trust for the benefit of the decedent's children. The trust was intended to qualify as a GST trust under I.R.C. § 2632(c)(3)(B). The decedent and spouse had filed Form 709, *United States Gift (and Generation-Skipping Transfer) Tax*

Returns, and elected to treat the contribution of property to the trust as a gift split one-half by the decedent and one-half by the spouse. However, the decedent and spouse failed to allocate any of the GST exemption to the transfer. The IRS granted an extension of time to make the GST allocation to the transfer. **Ltr. Rul. 201711001, Nov. 10, 2016**.

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. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death including any taxable gifts made by the decedent. The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201710002, Nov. 9, 2016, Ltr. Rul. 201710004, Nov. 21, 2016, Ltr. Rul. 201710010, Nov. 21, 2016, Ltr. Rul. 201710011, Nov. 28, Ltr. Rul. 201710014, Nov. 21, 2016, Ltr. Rul. 201701015, Nov. 30, 2016, Ltr. Rul. 201710020, Nov. 28, 2016.**

FEDERAL INCOME TAXATION

ADOPTION TAX CREDIT. The IRS has published information for taxpayers who have adopted or tried to adopt a child in 2016 about qualifying for the adoption tax credit. *The Credit*. The credit is nonrefundable, which may reduce taxes owed to zero, but if the credit exceeds the tax owed, there is no refund of the additional amount. In addition, if an employer helped pay for the adoption through a written qualified adoption assistance program, that amount may reduce any taxes owed. *Maximum Benefit*. The maximum adoption tax credit and exclusion for 2016 is $13,460 per child. *Credit Carryover*. If the credit exceeds the tax owed, taxpayers can carry any unused credit forward. For example, the unused credit in 2016 can reduce taxes for 2017. Taxpayers may use this method for up to five years or until the credit is fully used, whichever comes first. *Eligible Child*. An eligible child is an individual under age 18 or a person who is physically or mentally unable to care for themselves. *Qualified Expenses*. Adoption expenses must be reasonable, necessary and directly related to the adoption of the child. Types of expenses may include adoption fees, court costs, attorney fees and travel. *Domestic or Foreign Adoptions*. Taxpayers can usually claim the credit whether the adoption is domestic or foreign. However, there are different rules regarding the timing of expenses for each type of adoption. *Special Needs Child*. A special rule may apply if the adoption is of an eligible U.S. child with special needs. Under this special rule, taxpayers can claim the tax credit, even if qualified adoption expenses were not paid. *No Double Benefit*. In some instances both the tax credit and the exclusion may be claimed but not for the same expenses. *Income Limits*. The credit and exclusion are subject to income limitations. These may reduce or eliminate the claimable amount. To claim the credit, taxpayers file Form 8839, *Qualified Adoption Expenses*. **IRS Tax Tip 2017-34**.

CHILD AND DEPENDENT CARE TAX CREDIT. The IRS has published information about the credit for care of children and dependents. Taxpayers can use the IRS Interactive Tax Assistant tool, *Am I Eligible to Claim the Child and Dependent Care Credit?*, to help determine if they are eligible to claim the credit for expenses paid for the care of an individual to allow the taxpayer to work or look for work. *Work-Related Expenses*. The care must have been necessary so a person could work or look for work. For those who are married, the care also must have been necessary so a spouse could work or look for work. This rule does not apply if the spouse was disabled or a full-time student. *Qualifying Person*. The care must have been for "qualifying persons." A qualifying person can be a child under age 13. A qualifying person can also be a spouse or dependent who lived with the taxpayer for more than half the year and is physically or mentally incapable of self-care. *Earned Income*. A taxpayer must have earned income for the year, such as wages from a job. For those who are married and file jointly, the spouse must also have earned income. Special rules apply to a spouse who is a student or disabled. *Credit Percentage/Expense Limits*. The credit is worth between 20 and 35 percent of allowable expenses. The percentage depends on the income amount. Allowable expenses are limited to $3,000 for paid care of one qualifying person. The limit is $6,000 if the taxpayer paid for the care of two or more. *Dependent Care Benefits*. Special rules apply for people who get dependent care benefits from their employer. Form 2441, *Child and Dependent Care Expenses*, has more on these rules. File the form with a tax return. *Qualifying Person's SSN*. The Social Security number of each qualifying person must be included to claim the credit. *Care Provider Information*. The name, address and taxpayer identification number of the care provider must be included on the return. Taxpayers who pay someone to come to their home and care for their dependent or spouse may be a household employee and the taxpayer may have to withhold and pay Social Security and Medicare tax and pay federal unemployment tax on the amounts paid for the care. See Publication 926, *Household Employer's Tax Guide*. **IRS Tax Tip 2017-28**.

CORPORATIONS

ENTITY CLASSIFICATION. A domestic corporation acquired all of the interests in a foreign entity eligible to elect to be classified as a disregarded entity for U.S. federal tax purposes. The foreign entity was classified, for U.S. federal tax purposes, as an association under the default rule of Treas. Reg. § 301.7701-3(b) and the domestic corporation intended the foreign entity to be treated as a disregarded entity. However, no election was filed using Form 8832, *Entity Classification Election*, to change the classification of the foreign entity to a disregarded entity for federal tax purposes. The IRS granted an extension of time to file the election using Form 8832. **Ltr. Rul. 201711004, Dec. 9, 2016**.

The taxpayer was a domestic association eligible to be treated as an association taxable as a corporation for federal tax purposes. However, the taxpayer failed to file Form 8832, *Entity Classification Election*, to change its classification to being taxed

as a corporation. The IRS granted an extension of time to file the election using Form 8832. **Ltr. Rul. 201711005, Dec. 7, 2016**.

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 2017 and (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2017.

For passenger automobiles placed in service in 2017 the depreciation limitations are as follows (note: these numbers are unchanged from 2016):

Tax Year	Amount
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 2017 the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$3,560
2d tax year	5,700
3d tax year	3,450
Each succeeding year	2,075

For passenger automobiles placed in service in 2017 for which the additional first year depreciation deduction applies, the depreciation limitations are as follows (note: these numbers are unchanged from 2016):

Tax Year	Amount
1st tax year	$11,160
2d tax year	5,100
3d tax year	3,050
Each succeeding year	1,875

For trucks and vans placed in service in 2017 for which the additional first year depreciation deduction applies, the depreciation limitations are as follows (note: these numbers are unchanged from 2016):

Tax Year	Amount
1st tax year	$11,560
2d tax year	5,700
3d tax year	3,350
Each succeeding year	2,075

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. The revenue procedure includes tables showing the inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased.

The procedure also provides revised tables of depreciation limitations and lessee inclusion amounts for passenger automobiles that were first placed in service or first leased by the taxpayer, respectively, during 2017. **Rev. Proc. 2017-29, I.R.B. 2017-14**.

DISASTER LOSSES. On February 17, 2017, the President determined that certain areas in Nevada were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe winter storm which began on January 5, 2017. **FEMA-4303-DR.** On February 24, 2017, the President determined that certain areas in Kansas were eligible for assistance from the government under the Act as a result of a severe winter storm which began on January 13, 2017. **FEMA-4304-DR.** Accordingly, taxpayers in these areas may deduct the losses on their 2017 or 2016 federal income tax returns. See I.R.C. § 165(i).

EARNED INCOME TAX CREDIT. The taxpayer filed a Schedule C for two tax years listing income from a cosmetology business operated out of the taxpayer's residence. All of the customers paid in cash and the taxpayer did not maintain any records of the transactions. The taxpayer claimed the earn income tax credit based on the income from the business and qualified children. The IRS adjusted the income on the Schedules C to zero and disallowed the earned income tax credit for lack of any taxable income. The taxpayer presented written statements from 12 regular customers testifying as to the amounts paid by them during the tax years. The court held that the taxpayer had income from the cosmetology business during the two tax years but decreased the amount to be more consistent with the evidence presented. Thus, the court held that the taxpayer had taxable income to support allowance of the earned income tax credit, although at a lesser amount than originally claimed. **Lopez v. Comm'r, T.C. Summary Op. 2017-16**.

EDUCATION EXPENSES. The IRS has published information for taxpayers, their spouses or their dependents who took post-high school coursework last year, and may be eligible for a tax credit or deduction. For 2016, there are two tax credits available to help taxpayers offset the costs of higher education. The American Opportunity Credit and the Lifetime Learning Credit may reduce the amount of income tax owed. Use Form 8863, *Education Credits (American Opportunity and Lifetime Learning Credits)*, to claim the education credits. The American Opportunity Credit (AOC) is (1) worth a maximum benefit up to $2,500 per eligible student; (2) only for the first four years at an eligible college or vocational school; (3) for students pursuing a degree or other recognized education credential; and (4) for students enrolled at least half time for at least one academic period during 2016. Taxpayers can claim the AOC for a student enrolled in the first three months of 2017 as long as they paid qualified expenses in 2016. The Lifetime Learning Credit (LLC) is (1) worth a maximum benefit up to $2,000 per tax return, per year, no matter how many students qualify; (2) available for all years of postsecondary education and for courses to acquire or improve job skills; and (3) available for an unlimited number of tax years. The tuition and fees deduction can reduce the amount of income subject to tax. This deduction may be beneficial for taxpayers who do not qualify for the American Opportunity Credit or the Lifetime Learning Credit. Use Form 8917, *Tuition and Fees Deduction*, to claim the tuition and fees deduction. The Tuition and Fees Deduction is (1) worth a maximum benefit up to $4,000; (2) claimed as an adjustment to income; (3) available even if a taxpayer doesn't itemize deductions on Schedule A; and (4) limited to tuition and certain related expenses required for enrollment or attendance

at eligible postsecondary educational institutions. Beginning in 2016, to be eligible for an education benefit, a student is required to have Form 1098-T, *Tuition Statement*. They receive this form from the school they attended. There are exceptions for some students. See Publication 970, *Tax Benefits for Education*, for more details. Taxpayers may only claim qualifying expenses paid in 2016. Taxpayers cannot claim either credit if someone else claims them as a dependent. Taxpayers cannot claim either AOTC or LLC and the Tuition and Fees Deduction for the same student or for the same expense in the same year. Income limits could reduce the amount of credits or deductions they can claim. The Interactive Tax Assistant tool on IRS.gov can help check eligibility. **IRS Tax Tip 2017-31**.

EMPLOYEE EXPENSES. The taxpayers, husband and wife, claimed deductions for unreimbursed employee expenses and Schedule C business expenses. The wife worked as an administrator for a law firm and participated in managing seminars and conferences for organizations serving office administrators. Although the involvement with these organizations was helpful to the wife's career and was related to the wife's work for the law firm, the seminar and conference management activities were not part of the wife's duties for the law firm. The wife did not provide any evidence that the expenses for these outside activities were not reimbursable by her employer or that she sought reimbursement for these expenses and that reimbursement was denied. Thus, the court found that the wife did not establish that her employer would not reimburse her. In addition, the court found that the wife failed to provide sufficient evidence to support the claimed expenses. Therefore, the court held that the employee expenses associated with the conference and seminar activities were not deductible unreimbursed employee expenses. **Beckey v. Comm'r, T.C. Summary Op. 2017-13**.

MEDIATION. The IRS has issued a revenue procedure formally establishing the *Small Business/Self-Employed Fast Track Settlement* (SB/SE FTS) program. The pilot for the program was announced in 2006 in *Ann. 2006-36, 2006-2 C.B. 390*. The program enables the IRS to resolve tax disputes with SB/SE businesses at an earlier stage, which is often within a shorter time than through the normal audit and appeal processes. **Rev. Proc. 2017-25, I.R.B. 2017-__**.

MOVING EXPENSES. The taxpayer moved from Pennsylvania to California in March 2012 in order to seek employment. The taxpayer signed an employment contract on June 7, 2012 which provided that employment would commence on July 16, 2012. The taxpayer provided some information for to the employer for marketing purposes and participated in employee training prior to commencing work. The taxpayer was employed from July 16, 2012 to March 7, 2013, less than 39 weeks. The taxpayer claimed deductions for the cost of moving to California and the deductions were denied by the IRS because the taxpayer was not employed for 39 weeks of the one year following the move. I.R.C. § 217(c)(2)(A) imposes conditions that taxpayers must satisfy to be eligible to claim a deduction for moving expenses. The condition at issue in this case requires that, during the 12-month period immediately following a taxpayer's arrival in the general location of his new principal place of work, the taxpayer be employed full time in that general location for at least 39 weeks. The taxpayer argued that the date for commencement of employment should be June 7, 2012 because the taxpayer could not seek other employment after that date. The court found that (1) the employment contract signed on that date listed July 16, 2012 as the commencement of employment, (2) the pre-employment activities did not amount to employment, and (3) the contract did not prohibit the taxpayer from seeking employment prior to commencing employment. Therefore, the court held that the taxpayer worked only from July 16, 2012 to March 7, 2013, less than 39 weeks within the year following the move, and that the moving expenses deduction was properly disallowed. **Anderson v. Comm'r, T.C. Summary Op. 2017-17**.

PASSIVE ACTIVITY LOSSES. The taxpayer worked full time for a real estate development company and was also employed by another company as a retail sales manager. The taxpayer reported gross rental income and expenses for six rental properties on Schedule E with a net loss for two tax years. The losses were disallowed by the IRS as passive activity losses but the taxpayer claimed that the taxpayer was eligible for the exception provided by I.R.C. § 469(c)(7) as a real estate professional. I.R.C. § 469(c)(7)(B) requires that to be eligible for the real estate professional exception, the taxpayer must show that (1) the taxpayer spent more than one-half of the total personal services performed in trades or businesses during the taxable year in real property trades or businesses in which the taxpayer materially participated and (2) the taxpayer performed more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates. The court did not examine the material participation issue because the court held that the taxpayer did not meet either test of I.R.C. § 469(c)(7)(B) because the taxpayer failed to provide any sufficient evidence of the time spent on the rental activity other than self-serving testimony at trial. **Rapp v. Comm'r, T.C. Summary Op. 2017-14**.

PENSION PLANS. The IRS has published information reminding taxpayers who turned age 70½ during 2016 that, in most cases, they must start receiving required minimum distributions (RMDs) from Individual Retirement Accounts (IRAs) and workplace retirement plans by Saturday, April 1, 2017. The April 1 deadline applies to owners of traditional (including SEP and SIMPLE) IRAs but not Roth IRAs. It also typically applies to participants in various workplace retirement plans, including 401(k), 403(b) and 457(b) plans. The April 1 deadline only applies to the required distribution for the first year. For all subsequent years, the RMD must be made by Dec. 31. A taxpayer who turned 70½ in 2016 (born after June 30, 1945 and before July 1, 1946) and receives the first required distribution (for 2016) on April 1, 2017, for example, must still receive the second RMD by Dec. 31, 2017. Affected taxpayers who turned 70½ during 2016 must figure the RMD for the first year using the life expectancy as of their birthday in 2016 and their account balance on Dec. 31, 2015. The trustee reports the year-end account value to the IRA owner on Form 5498, *IRA Contribution Information,* in

Box 5. Worksheets and life expectancy tables for making this computation can be found in the appendices to Publication 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*. Most taxpayers use Table III (Uniform Lifetime) to figure their RMD. For a taxpayer who reached age 70½ in 2016 and turned 71 before the end of the year, for example, the first required distribution would be based on a distribution period of 26.5 years. A separate table, Table II, applies to a taxpayer married to a spouse who is more than 10 years younger and is the taxpayer's only beneficiary. Both tables can be found in the appendices to Publication 590-B. Although the April 1 deadline is mandatory for all owners of traditional IRAs and most participants in workplace retirement plans, some people with workplace plans can wait longer to receive their RMD. Employees who are still working usually can, if their plan allows, wait until April 1 of the year after they retire to start receiving these distributions. See Tax on Excess Accumulation in Publication 575. Employees of public schools and certain tax-exempt organizations with 403(b) plan accruals before 1987 should check with their employer, plan administrator or provider to see how to treat these accruals. **IR-2017-63**.

REFUNDS. The IRS has published information about tax refund offsets. *Bureau of the Fiscal Service*. The Department of Treasury's Bureau of the Fiscal Service, or BFS, runs the Treasury Offset Program. *Offsets to Pay Certain Debts*. The BFS may also use part or all of a tax refund to pay certain other debts such as: federal tax debts; federal agency debts such as a delinquent student loan; state income tax obligations; past-due child and spousal support; and certain unemployment compensation debts owed to a state. *Notify by Mail*. The BFS will mail a taxpayer a notice if it offsets any part of a refund to pay a debt. The notice will list the original refund and offset amount. It will also include the agency that received the offset payment. It will also give the agency's contact information. *How to Dispute an Offset*. If a taxpayer wishes to dispute an offset, the taxpayer should contact the agency that received the offset payment. Taxpayers should contact the IRS only if the offset payment was applied to a federal tax debt. *Injured Spouse Allocation*. Taxpayers may be entitled to part or the entire offset if they filed a joint tax return with their spouse. This rule applies if their spouse is solely responsible for the debt. To get part of the refund, taxpayers should file Form 8379, *Injured Spouse Allocation*. **IRS Tax Tip 2017-33**.

RETURNS. The IRS has published information for taxpayers who cannot complete their tax return by April 18. Taxpayers who need more time to complete their return can request an automatic six-month extension. An extension allows for extra time to gather, prepare and file paperwork with the IRS, however, it does not extend the time to pay any tax due. The fastest and easiest way to get an extension is through Free File on IRS.gov. Taxpayers can electronically request an extension on Form 4868. This service is free for everyone, regardless of income. Filing this form gives taxpayers until Oct. 16, 2017 to file their tax return. To get the extension, taxpayers must estimate their tax liability on this form and should pay any amount due. Other fast, free and easy ways to get an extension include using IRS Direct Pay, the Electronic Federal Tax Payment System or by paying with a credit or debit card. *There is no need to file a separate Form 4868 extension request* when making an electronic payment and indicating it is for an extension. The IRS will automatically count it as an extension. Direct Pay is available online and on the IRS2Go app. It is free, does not require pre-registration and gives instant confirmation when taxpayers submit a payment. It also provides the option of scheduling a payment up to 30 days in advance. Taxpayers using a credit or debit card can pay online, by phone or with the IRS2Go app. The card processor charges a fee, but the IRS does not charge any fees for this service. **IR-2017-65**.

SAFE HARBOR INTEREST RATES
April 2017

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.11	1.11	1.11	1.11
110 percent AFR	1.22	1.22	1.22	1.22
120 percent AFR	1.33	1.33	1.33	1.33
		Mid-term		
AFR	2.12	2.11	2.10	2.10
110 percent AFR	2.33	2.32	2.31	2.31
120 percent AFR	2.55	2.53	2.52	2.52
		Long-term		
AFR	2.82	2.80	2.79	2.78
110 percent AFR	3.10	3.08	3.07	3.06
120 percent AFR	3.39	3.36	3.35	3.34

Rev. Rul. 2017-08, I.R.B. 2017-14.

S CORPORATIONS

SHAREHOLDER DISTRIBUTIVE SHARE OF INCOME. The taxpayer was a 50 percent shareholder in an S corporation. The taxpayer and the other shareholder had disagreements about the operation of the corporation and the taxpayer returned all the taxpayer's shares in the corporation back to the corporation, effectively terminating the corporation on July 28, 2008. The corporation filed a final return for the short tax year ending on July 28, 2008 and issued a Schedule K-1 to the taxpayer showing the taxpayer's share of the corporation's income, $451,531. Although the taxpayer included the entire Schedule K-1 amount on Schedule E for 2008, line 17 on Form 1040 listed only part of the income. The taxpayer argued that the income shown on the final corporate return and the Schedule K-1 was not taxable because the taxpayer did not receive a distribution and was not otherwise enriched by the corporation. The IRS countered that the taxpayer failed to establish that the final corporate return and the Schedule K-1 were inaccurate. The court found that the taxpayer failed to provide sufficient evidence that the income reported on the corporation's final return and Schedule K-1 were inaccurate. The court held that, as a 50 percent owner of the corporation up to its termination, the taxpayer was liable for tax on one-half of the corporation's net income which flowed through to the taxpayer as shown on the Schedule K-1. **Dalton v. Comm'r, T.C. Memo. 2017-43**.

WITHHOLDING TAXES. The IRS has issued a revenue procedure which provides guidance to employers on the requirements for employee consent used by an employer to support a claim for credit or refund of overpaid taxes under the Federal Insurance Contributions Act (FICA) and the Railroad Retirement Tax Act (RRTA) pursuant to I.R.C. § 6402 and Treas. Reg. § 31.6402(a)-2. FICA taxes include the old-age, survivors,

and disability insurance taxes imposed on employees under I.R.C. § 3101(a) and on employers under I.R.C. § 3111(a) (also known as social security taxes) and the hospital insurance tax imposed on employees under I.R.C. § 3101(b) and on employers under I.R.C. § 3111(b) (also known as Medicare taxes). Under RRTA, railroad employment is subject to a system of taxes separate and distinct from the taxes imposed under FICA, which covers most other employees. Tier 1 RRTA taxes, imposed under I.R.C. §§ 3201(a), 3211(a), and 3221(a), provide benefits equivalent to social security and Medicare benefits. The revenue procedure clarifies the basic requirements for both a request for employee consent and for the employee consent, including the requirement that an employee consent must include the basis for the claim for refund and be signed by the employee under penalties of perjury. In addition, this revenue procedure permits, but does not require, employee consent to be requested, furnished, and retained in an electronic format as an alternative to a paper format. It also contains guidance concerning what constitutes "reasonable efforts" if employee consent is not secured in order to permit the employer to claim a refund of the employer share of overpaid FICA or RRTA taxes. **Rev. Proc. 2017-28, I.R.B. 2017-__**.

INSURANCE

COVERAGE. The plaintiff contracted with a third party to feed over 1,000 pigs owned by the plaintiff. The third party hired independent contractors to perform the care and feeding of the pigs under the contract. The third party maintained property insurance which provided an exclusion from coverage for property "in the care of" the third party insured. The pigs all died due to negligence by the independent contractors and the plaintiff obtained a judgment for the loss of the pigs. The plaintiff then brought an equitable garnishment action against the insurance company which denied the claim based on the exclusion. The trial court granted summary judgment for the insurance company. The appellate court first looked at the language of the policy and determined that the phrase "property in the care of" was ambiguous because the policy did not define "care" which was subject to several interpretations. The court noted that the term was particularly ambiguous in this situation where the care of the pigs was delegated to the independent contractors. In addition, the plaintiff had alleged that the third party was negligent, not in the care of the pigs, but in choosing incompetent persons to provide the care. Because the exclusion language was ambiguous, the exclusion had to be interpreted against the insurance company and the appellate court reversed the grant of summary judgment and remanded the case for trial. **Maher Bors., Inc. v. Quinn Pork, LLC, 2017 Mo. App. LEXIS 140 (Mo. Ct. App. 2017)**.

STATE TAXATION OF AGRICULTURE

FEED TRUCKS. The taxpayer was a cattle rancher which owned several trucks used to mix, haul and deliver feed to cattle on the ranch. The trucks were modified to restrict their top speed at 20 mph and were too wide to be driven on public roads legally. In order to be repaired, the trucks had to be carried on a trailer in order to be transported on public roads. The county assessed property taxes for the trucks and the taxpayer appealed the assessment, arguing that Kan. Stat. § 79-201j exempted the trucks from tax as farm machinery. Kan. Stat. § 79-201j provides an exemption from taxation for: "(a) All farm machinery and equipment. The term 'farm machinery and equipment' means that personal property actually and regularly used in any farming or ranching operation. . . . The term 'farming or ranching operation' shall include the operation of a feedlot, the performing of farm or ranch work for hire and the planting, cultivating and harvesting of nursery or greenhouse products, or both, for sale or resale. The term 'farm machinery and equipment' shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as the terms are defined by K.S.A. 8-126, and amendments thereto." Kan. Stat. § 8-126(nn) defines truck as "a motor vehicle which is used for the transportation or delivery of freight and merchandise or more than 10 passengers." The evidence showed that the mixer-feeder trucks could not and were not used for delivery of freight or merchandise and could not carry more than 10 passengers. In addition, Kan. Stat. § 8-126(p)(5) specifically classifies mixer-feeder trucks as implements of husbandry. The court held that the mixer-feeder trucks were exempt farm machinery because they did not qualify as trucks under Kan. Stat. § 8-126(nn) since they could not be used off the farm to deliver freight or merchandise and could not carry more than 10 passengers. **In the Matter of the Appeal of Reeve Cattle Co., Inc., 2017 Kan. App. LEXIS 25 (Kan. Ct. App. 2017)**.

IN THE NEWS

FEDERAL TAX SYSTEM. The Congressional Joint Committee on Taxation has published a summary of the current federal tax system. **Overview of the Federal Tax System as in Effect for 2017, JCX-17-17, March 15, 2017**.

TAX SCAMS. The IRS has published an IRS Fact Sheet for tax professionals on dealing with tax-related identity theft involving clients. See also Publication 5199, *Tax Preparer Guide to Identity Theft*; Publication 5027, *Identity Theft Information for Taxpayers*; Publication 4600, *Safeguarding Taxpayer Information*. **IRS Fact Sheet FS-2017-4, March 21, 2017**.

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- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special use valuation
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the regulations
- Federal estate tax liens
- Gifts to charity with a retained life estate

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust
The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

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

Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock
- Status of the corporation as a farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries
- Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sale
- Stock redemption

Social Security
- In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Leasing land to family entity
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Repairs and Form 3115; changing from accrual to cash accounting
- Paying rental to a spouse
- Paying wages in kind
- PPACA issues including scope of 3.8 percent tax

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

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

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

Self-employment tax
- Meaning of "business"

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