CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

DISMISSAL. The debtors originally filed for Chapter 12 and their petition stated that they had received credit counseling. However, the court discovered that the debtors had not actually received credit counseling because no affidavit of counseling was provided. The court allowed the debtors to obtain credit counseling and proceed with the case. The debtors later converted the case to Chapter 7 and then moved to dismiss the case, arguing that they were not eligible for the original Chapter 12 case because they failed to obtain credit counseling prior to filing that case. The court held that the failure to obtain credit counseling did not deprive the court of jurisdiction and that the debtors were estopped from seeking dismissal because they had taken advantage of the bankruptcy protection for over 21 months. ***In re* Timmerman, 2007 Bankr. LEXIS 4055 (Bankr. N.D. Iowa 2007)**.

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE. The APHIS has issued proposed regulations which amend the Animal Welfare Act regulations regarding transportation of live animals other than marine mammals by removing the current ambient temperature requirements for various stages in the transportation of those animals and replacing those requirements with a single performance standard under which the animals would be transported under climatic and environmental conditions that are appropriate for their welfare. The regulations currently require that ambient temperatures be maintained within certain ranges during transportation, but animals may be transported at ambient temperatures below the minimum temperatures if their consignor provides a certificate signed by a veterinarian certifying that the animals are acclimated to temperatures lower than the minimum temperature. This proposal would make acclimation certificates for live animals other than marine mammals unnecessary. **73 Fed. Reg. 413 (Jan. 3, 2008)**.

DISASTER ASSISTANCE. The FSA has adopted as final regulations governing the 2007 Emergency Agricultural Assistance programs: the Crop Disaster Program (CDP) and a 2005-2007 Livestock Indemnity Program (LIP). For CDP, the program applies only to 2005, 2006, and 2007 crop producers who chose to have a federal crop insurance plan of insurance or Noninsured Crop Disaster Assistance Program coverage for the year of loss and suffered damage due to a natural disaster. Eligible crops for 2007 must have been planted prior to February 28, 2007. For LIP, the program applies only to livestock producers in counties designated as a major disaster or emergency area by the President or those declared a natural disaster area by the Secretary of Agriculture. Counties designated disasters by the President may be eligible even though agricultural loss was not covered by the designation if there has been an FSA administrator's physical loss notice covering such losses. The natural disaster declarations by the Secretary or designations by President must have been issued after January 1, 2005 and before February 28, 2007. Counties contiguous to such counties will also be eligible. **72 Fed. Reg. 72863 (Dec. 21, 2007)**.

NATIONAL ANIMAL IDENTIFICATION SYSTEM. The APHIS has announced that it has prepared and issued a revised version of the National Animal Identification System (NAIS) User Guide that was originally released in draft form in November 2006. The revised User Guide contains the most current information on how the system works and how producers may participate in the NAIS. **72 Fed. Reg. 71873 (Dec, 29, 2007)**.

ORGANIC FOOD. The AMS has adopted as final regulations amending the USDA National List of Allowed and Prohibited Substances regulations to reflect recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board on August 17, 2005, adding one substance, sucrose octanoate esters. **72 Fed. Reg. 69569 (Dec. 10, 2007)**.

The AMS has adopted as final regulations amending the USDA National List of Allowed and Prohibited Substances regulations to reflect recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board from October 30, 2000 through March 3, 2005, adding nine substances. **72 Fed. Reg. 70479 (Dec. 12, 2007)**.

The Organic Foods Production Act of 1990 requires a five year sunset review of the exempted or prohibited use of substances under the National Organic Program (NOP). The AMS has announced the sunset review of 11 exempted substances and 1 prohibited substance added to the National List on November 3 and 4, 2003. The announcement establishes November 3, 2008, as the date by which the sunset review and renewal process must be concluded. **72 Fed. Reg. 73667 (Dec. 28, 2007)**.

PERISHABLE AGRICULTURAL COMMODITIES ACT. The plaintiff sold apple cider to the defendant and filed a claim against the PACA trust for non-payment for the cider. The defendant argued that apple cider was not a perishable agricultural commodity covered by the PACA trust provisions. The court agreed with the defendant and held that the processing of apples into cider sufficiently changes the nature of the produce such that the cider is not a perishable agricultural commodity covered by the PACA trust provisions. **Bear Mountain Orchards, Inc. v. Mich-Kim, Inc., 2007 U.S. Dist. LEXIS 88983 (E.D. Penn. 2007)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION-SKIPPING TRANSFERS. An irrevocable trust was established prior to September 25, 1985. The beneficiary and trustees petitioned a state court to convert the income interest to a unitrust interest. The IRS ruled that the conversion of an income interest to a unitrust interest as provided by state law did not subject the trust to GSTT. **Ltr. Rul. 200752026, Sept. 24, 2007**.

An irrevocable trust established prior to September 25, 1985 had several beneficiaries. The beneficiaries disagreed on several provisions in the trust and negotiated an agreement to revise the trust. The agreement was approved by a local court. The IRS ruled that the agreed to revisions did not subject the trust to GSTT because the revisions did not alter any interests of the beneficiaries or any person in a lower generation than the current beneficiaries. **Ltr. Rul. 200752018, Aug. 28, 2007**.

The decedent had transferred property to a trust with GSTT potential. The decedent had retained a qualified tax professional to prepare the Form 709 for the transfer but the filing erroneously did not allocate any of the GSTT exemption to the transfer. The error was discovered several years after the decedent's death and the executor sought an extension of time to amend the return with the exemption election. The IRS granted the estate an extension of 60 days to file an amended return with the proper election. In addition, the decedent had made two gifts to grandchildren, each less than $2 million. The gifts were made after September 25, 1985 and before October 23, 1986. The IRS ruled that the gifts were not considered direct gifts under the rules in effect on the date of the transfers. **Ltr. Rul. 200751019, Aug. 15, 2007**.

MARITAL DEDUCTION. The decedent's spouse predeceased the decedent by 45 days. The decedent's will included a provision that, if the spouse predeceased the decedent by less than six months, the spouse would be deemed to have survived the decedent for purposes of distribution under the will. A portion of the decedent's residuary estate passed to the predeceased spouse's estate under the will and the decedent's estate claimed a marital deduction for that bequest. The court held that the marital deduction applied only for bequests to surviving spouses, that the predeceased spouse was not a surviving spouse, and that the decedent's will designation of the predeceased spouse as a surviving spouse had no affect for purposes of the marital deduction. **Estate of Lee v. Comm'r, T.C. Memo. 2007-371**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayers, husband and wife, reported qualified dividends on the income tax return but did not include the dividends in gross income. Instead, the taxpayer calculated the tax on the dividends separately and added that amount to the tax owed on the remainder of their taxable income. The IRS treated this as a math error and included the dividends in taxable income, resulting in assessment of alternative minimum tax (AMT). The taxpayers claimed that they reported the dividends correctly, according to the forms and instructions. The court held that a possible ambiguity in the instructions was not sufficient to overcome the statutory requirement that taxable income included dividends. **Weiss v. Comm'r, 129 T.C. No. 18 (2007)**.

BAD DEBT DEDUCTION. The taxpayer was injured in an accident, filed suit for personal injuries and was awarded a monetary award. However, the defendant in the suit filed for Chapter 7 bankruptcy and the taxpayer did not receive any payments. The taxpayer claimed a loss from the unpaid judgment and elected to carry the excess losses forward. The court held that no deduction was allowed for the unpaid judgment because the loss was not incurred as part of a trade or business or as part of a theft or casualty. The loss was not deductible as a bad debt because the taxpayer had no tax basis in the judgment. The appellate court affirmed in a decision designated as not for publication. **Green v. Comm'r, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,108 (9th Cir. 2001), *aff'g*, T.C. Memo. 2006-39**.

BUSINESS EXPENSES. The taxpayer filed two Schedule C forms for two businesses, a real estate investment business and a greeting card and gift item business. Neither activity produced any revenue and the taxpayer claimed several items of business expenses, resulting in net losses for both businesses. The taxpayer terminated both businesses after one tax year. The court upheld the IRS disallowance of the losses because neither business was operating as a going concern and the expenses resulted primarily from the taxpayer's attempt to start each business. **Tomlinson v. Comm'r, T.C. Summary Op. 2007-210**.

The taxpayer was employed part-time as a delivery truck driver. The taxpayer filed a Schedule C with business expenses for a packing and shipping service and included the wages from the employment as business income. The court disallowed the business expenses because the taxpayer failed to provide written substantiation of the purpose of the expenses. The court also held that the packing and shipping activity was not entered into with the intent to make a profit because the activity had no receipts other than the taxpayer's wages. The court noted that the activity violated the taxpayer's residential lease, the activity had no separate bank account and the taxpayer had not maintained any records of the activity. **Jackson v. Comm'r, T.C. Summary Op. 2007-208**.

CASUALTY LOSSES. In a Chief Counsel Advice letter, the IRS ruled that taxpayers who suffered losses in Hurricane Katrina in 2005 were not required to reduce those losses by amounts received under the Road Home grants or other reimbursements received in 2006 as expected recoveries, because the programs establishing those grants were not approved until after 2005. The IRS noted that, although taxpayers are required to reduce their claimed losses by a recovery amount reasonably expected before filing of the 2005 return, the IRS has to apply the reasonably expected rule as of the end of the 2005 tax year. Therefore, the IRS ruled that IRS examiners cannot challenge Katrina casualty losses claimed for 2005 which were not reduced by the grants approved in 2006 and thereafter. **CCA Ltr. Rul. 200750016, Nov. 8, 2007**.

CORPORATIONS

STOCK OPTIONS. The IRS announced that it intends to issue regulations amending Treas. Reg. § 1.6039-1 which provides the requirements for information returns regarding stock options. The new regulations will be retroactive to January 1, 2007 and add reporting requirements included in the Tax Relief and Health Care Act of 2006 such that corporations will now be required to send information returns to the IRS as well as employees. **Notice 2008-8, I.R.B. 2008-__**.

CHARITABLE DEDUCTIONS. The taxpayers, three related married couples, donated interests in a family limited partnership to a charity. The court held that a charitable contribution deduction was properly denied because the taxpayer failed to obtain a contemporaneous written acknowledgement from the charitable donee and provide a qualified appraisal of the value of the donated property. **Smith v. Comm'r, T.C. Memo. 2007-368**.

DEBTS. The IRS has ruled that a debt instrument providing an economic return by reference to the euro (and market interest rates in respect of the euro) was a euro-denominated indebtedness of the issuer despite being both issued and redeemed for U.S. dollars. The acquisition of, or becoming an obligor under, a debt instrument is an I.R.C. § 988 transaction if the amount a taxpayer is either required to pay or entitled to receive is determined by reference to a nonfunctional currency. **Rev. Rul. 2008-1, I.R.B. 2008-2**.

DEPENDENTS. I.R.C. § 152(d)(1)(D) provides that an individual is not a qualifying relative of the taxpayer if the individual is a qualifying child of any other taxpayer. The IRS has issued guidance that an individual is not a qualifying child of "any other taxpayer" if the individual's parent (or other person with respect to whom the individual is defined as a qualifying child) is not required by I.R.C. § 6012 to file an income tax return and (i) does not file an income tax return, or (ii) files an income tax return solely to obtain a refund of withheld income taxes. **Notice 2008-5, I.R.B. 2008-2**.

DISCHARGE OF INDEBTEDNESS INCOME. The taxpayers, husband and wife, financed the construction of a personal residence with a mortgage. After the taxpayers defaulted on the loan, the creditor foreclosed on the property and the property was sold for an amount less than the loan balance. The mortgage lender did not seek a deficiency judgment for the balance of the loan and issued a Form 1099-C for the amount of the cancelled debt. The taxpayers did not include any of the forgiven amount in gross income because they claimed to be insolvent at the time of the loan forgiveness. The court examined the taxpayers' financial status as of the moment prior to the discharge of indebtedness, including the value of the property and the mortgage amount in the calculation. The court found that the taxpayers were insolvent to an amount $244 less than the the amount forgiven; therefore, the $244 amount was included in taxable income. **Keith v. Comm'r, T.C. Summary Op. 2007-214**.

DISABLED ACCESS CREDIT. The taxpayers entered into a contracts to purchase pay phones which were modified to provide easier access by disabled persons. The agreement provided for guaranteed minimum payments to the taxpayer but provided that the phone company had responsibility for locating, installing, monitoring and maintaining the phones. The agreement allowed the taxpayer to sell the phones back to the company after five years at the same price, or earlier less a 10 percent restocking fee. The taxpayer claimed depreciation deductions for the phones and claimed a tax credit, under I.R.C. § 44, the disabled access credit. The Tax Court held that the taxpayer did not have sufficient ownership interest in the phones to take a depreciation deduction. The court noted that the taxpayer had no responsibility for maintenance and no risk of loss of value because of the the buy-back provision. The court also held that the disabled access credit could not be claimed by the taxpayer for the same reason as the denial of depreciation deductions. **Sita v. Comm'r, T.C. Memo. 2007-363**.

DISASTER LOSSES. On December 18, 2007, the President determined that certain areas in Oklahoma are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe winter storms, which began on December 8, 2007. **FEMA-1735-DR**. On December 12, 2007, the President determined that certain areas in Missouri are eligible for assistance from the government under the Act as a result of severe winter storms, which began on December 8, 2007. **FEMA-3281-EM**. On December 12, 2007, the President determined that certain areas in Kansas are eligible for assistance from the government under the Act as a result of severe winter storms, which began on December 6, 2007. **FEMA-3282-EM**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2006 returns.

GAMBLING LOSSES. The taxpayer was a recreational gambler who reported net gambling winnings on the income tax return. However, the IRS disallowed most of the gambling losses which reduced the taxable winnings. The Court upheld the disallowance of the losses for lack of substantiation by the taxpayer because the taxpayer provided no written evidence to support the full amount of the gambling losses claimed. **Jackson v. Comm'r, T.C. Memo. 2007-373**.

HOBBY LOSSES. The taxpayers, two related married couples, were denied claimed business expenses for horse-raising and dog breeding activities. The court held that the activities were not entered into with the intent to make a profit because (1) they failed to keep proper records regarding their business activities and the purchase, sale, or breeding of the respective animals sufficient to analyze and improve the profitability of the activities; (2) they failed to keep separate bank accounts; and (3) they each reported continuous and increasing losses from the activities. **Smith v. Comm'r, T.C. Memo. 2007-368**.

HYBRID VEHICLE TAX CREDIT. The IRS has announced additional General Motors Corp. hybrid vehicle certifications and the credit amounts for:

Year and Model	Credit Amount
Chevrolet Tahoe Hybrid (2WD)	$2,200
Chevrolet Tahoe Hybrid (4WD)	$2,200
GMC Yukon Hybrid (2WD)	$2,200
GMC Yukon Hybrid (4WD)	$2,200
Saturn Vue Green Line	$1,550

See Harl, "Additional Items in the Energy Policy Act of 2005, 16 *Agric. L. Dig*. 131 (2005). **IR-2007-210**.

LOW INCOME HOUSING CREDIT. Pursuant to Treas. Reg. § 1.42-16(b)(3) IRS has determined that certain rental assistance payments made to a building owner on behalf or in respect of a tenant under the Indian Housing Block Grant Program authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. § 4101 *et seq.*) are not grants made with respect to a building or its operation under I.R.C. § 42(d)(5). **Rev. Rul. 2008-6, I.R.B. 2008-3**.

MEDICAL EXPENSES. The IRS has issued guidance regarding the deductibility of amounts paid by individuals for diagnostic and similar procedures, including certain devices, not compensated by insurance or otherwise, as medical care expenses under I.R.C. § 213(a). The guidance clarifies that: (1) I.R.C. §213 does not limit the deduction to amounts paid for the least expensive form of medical care applicable, and (2) a physician's recommendation, while often important for determining whether certain expenses are for medical or personal reasons, is unnecessary when the expenditures are for items wholly medical in nature that serve no other function. The guidance identifies three examples where the medical deduction would be allowed: (1) an annual physical examination; (2) a full-body imaging scan not ordered by a physician; and (3) a home pregnancy test. **Rev. Rul. 2007-72, I.R.B. 2007-50**.

PARTNERSHIPS.

PUBLICLY TRADED PARTNERSHIPS. In a Chief Counsel Advice letter, the IRS ruled that the income derived from the distribution and marketing of propane to end users at the retail level constituted qualifying income under I.R.C. § 7704(d)(1)(E) such that a publicly traded partnership with such income would not be required to be taxed as a corporation, under I.R.C. § 7704. **CCA Ltr. Rul. 200749012, Aug. 15, 2007**.

WIND ENERGY PRODUCTION CREDIT. The IRS issued procedures establishing safe harbor requirements for partnerships claiming I.R.C. § 45 wind energy production tax credits. *Rev. Proc. 2007-65, 2007-2 C.B. 967*. The safe harbor applies to partnerships between a project developer and one or more investors with the partnership owning and operating the qualified energy facilities only if the developer, investors and partnership satisfy each requirement in section four of the procedure. Furthermore, the revenue procedure applies only to partners or partnerships with I.R.C. § 45 production tax credits and does not apply to any other tax credits. The procedure is effective for transactions entered into on or after November 5, 2007. The IRS has announced a revision of *Rev. Proc. 2007-65*, by adding the following language to Section 3: "The requirements set forth in this revenue procedure that must be satisfied in order to qualify for the Safe Harbor, however, are not intended to provide substantive rules and are not to be used as audit guidelines." and replacing "will not challenge" with "will respect" in Section 6. **Ann. 2007-112, 2007-2 C.B. 1175**.

QUALIFIED DEBT INSTRUMENTS. The IRS has announced the 2008 inflation adjusted amounts of debt instruments which qualify for the interest rate limitations under I.R.C. §§ 483 and 1274:

Year of Sale or Exchange	1274A(b) Amount	1274A(c)(2)(A) Amount
2008	$4,913,400	$3,509,600

The $4,913,400 figure is the dividing line for 2008 below which (in terms of seller financing) the minimum interest rate is the lesser of 9 percent or the Applicable Federal Rate (see January 2008 AFRs below). Where the amount of seller financing exceeds the $4,913,400 figure, the imputed rate is 100 percent of the AFR except in cases of sale-leaseback transactions, where the imputed rate is 110 percent of AFR. If the amount of seller financing is $3,509,600 or less (for 2008), both parties may elect to account for the interest under the cash method of accounting. **Rev. Rul. 2008-3, I.R.B. 2008-2**.

REFUNDS. The taxpayer filed an untimely and unsigned return just under three years after payment of taxes associated with the return. The return claimed a refund for the tax year. The taxpayer faxed a signed second page for the return but there was no evidence that the faxed second page reached the IRS before the end of three years after the taxes were paid. In a Chief Counsel Advice letter the IRS ruled that the refund claim was not properly filed until the signature page was attached to the return and because the signature page did not reach the IRS within three years after payment of the taxes, the refund claim was disallowed as untimely filed. **CCA Ltr. Rul. 200751025, July 26, 2007**.

SAFE HARBOR INTEREST RATES
January 2008

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	3.18	3.16	3.15	3.14
110 percent AFR	3.51	3.48	3.46	3.46
120 percent AFR	3.83	3.79	3.77	3.76
Mid-term				
AFR	3.58	3.55	3.53	3.52
110 percent AFR	3.95	3.91	3.89	3.88
120 percent AFR	4.31	4.26	4.24	4.22
Long-term				
AFR	4.46	4.41	4.39	4.37
110 percent AFR	4.91	4.85	4.82	4.80
120 percent AFR	5.36	5.29	5.26	5.23

Rev. Rul. 2008-4, I.R.B. 2008-3.

S CORPORATIONS

PASSIVE INVESTMENT INCOME. The taxpayer S corporation owned and leased residential and commercial real estate. A related corporation provided management and operating services for the rental properties for which the taxpayer provided compensation. The IRS ruled that the rental income was not passive investment income because the taxpayer, through the related corporation, provided significant services to the rental properties. **Ltr. Rul. 200752030, Sept. 14, 2007**.

SECOND CLASS OF STOCK. The taxpayer was a 50 percent shareholder in a family-owned S corporation. When the taxpayer's parent decided to reduce involvement in the business, the family agreed to have fixed, monthly distributions made to the parent. When the taxpayer learned that the agreement and distributions created a second class of stock and the termination of the S corporation status, the taxpayer did not include the taxpayer's distributive share of corporation income as personal income. The court held that the taxpayer failed to prove that the agreement was binding on the parties; therefore, the agreement did not create a second class of stock and the taxpayer's share of corporation income was taxable to the taxpayer. **Minton v. Comm'r, T.C. Memo. 2007-372**.

SALE OF RESIDENCE. The taxpayers, husband and wife, owned two houses as a result of several changes of employment. The taxpayers claimed one house as their principal residence and sought to exclude the gain from the sale of that property and an adjoining lot under I.R.C. § 121. The IRS argued that the husband used another house as a principal residence because husband used the house while fulfilling employment commitments, used the house as a mailing address and used the house for social gatherings. The court held that the taxpayers had provided sufficient evidence that the sold house was their intended principal residence; therefore, gain from the sale could be excluded from taxable income under Section 121. However, the court held that gain from the sale of the adjoining lot could not be excluded from income because the lot was owned by a family limited partnership. Although the taxpayers retained control over the partnership, the partnership was the taxable entity which owned the property at the time of sale. **Farah v. Comm'r, T.C. Memo. 2007-369**.

TAX PREPARERS. The IRS has adopted as final regulations under I.R.C. § 7216 governing the disclosure and use of return information by return preparers and the requirements for a valid taxpayer consent to such disclosure or use. **IR-2008-2**.

The IRS has provided guidance to tax return preparers regarding the format and content of consents to disclose and use tax return information with respect to a Form 1040 series return under Treas. Reg. § 301.7216-3. The IRS has also provided specific requirements for electronic signatures when a taxpayer executes an electronic consent. Several illustrative examples are included. The procedure is effective after December 31, 2008. **Rev. Proc. 2008-12, I.R.B. 2008-4**.

The IRS has issued guidance providing interim rules implementing and interpreting the tax return preparer penalty as expanded by the Small Business and Work Opportunity Tax Act of 2007, *Pub. L. No. 110-28, 121 Stat. 190 (2007)*. The interim rules will be in effect until the overhaul of the current return preparer penalty regulations is complete. The interim rules emphasize the importance to preparers of understanding the legal basis for positions taken on tax returns, the requirement for taxpayers to disclose certain positions, and the need for preparers to advise taxpayers on the various penalties that can apply when a position is taken on a return that may not be supported by existing law. Under the guidance, preparers generally can continue to rely on taxpayer representations in preparing returns and can also generally rely on representations of third parties, unless the preparer has reason to know they are wrong. The new law also expanded the return preparer penalty to cover all tax return preparers, not just income tax return preparers. Further, preparers of many information returns will not be subject to the new penalty provision unless they willfully understate tax or act in reckless or intentional disregard of the law. **Notice 2008-13, I.R.B. 2008-3**.

The Small Business and Work Opportunity Act of 2007, Pub. L. No. 110-28, § 8246, 121 Stat. 210 (2007), extended the application of the income tax return preparer penalties to all tax return preparers, altered the standards of conduct that must be met to avoid imposition of the penalties for preparing a return which reflects an understatement of liability, and increased applicable penalties. The amendments were effective for tax returns prepared after the date of the enactment, May 25, 2007. The IRS has announced that the guidance for interpretation of the new rules, *Notice 2007-54, 2007-2 C.B. 12*, has been clarified to provide that certain employment and excise original and amended returns and refund claims will qualify for the transitional relief. **Notice 2008-11, I.R.B. 2008-3**.

Section 8246 of the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, 121 Stat. 190 (2007) amended I.R.C. § 6695(b) to impose a penalty on a tax return preparer of any return or claim for refund who fails to sign a return when required by regulations prescribed by the Secretary, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. The penalty under I.R.C. § 6695(b) is $50 for each failure to sign, with a maximum of $25,000 per person imposed with respect to each calendar year, effective for tax returns and claims for refund prepared after May 25, 2007. The IRS has issued guidance as to the returns and claims for refunds required to be signed by a tax return preparer in order to avoid the penalty. **Notice 2008-12, I.R.B. 2008-3**.

THEFT DEDUCTION. The taxpayers, husband and wife, hired a contractor to build a residence for them. The finished residence had construction problems and the taxpayers sued the contractor for negligence and fraud. No criminal charges were filed. The parties settled the lawsuit without the contractor admitting any wrongdoing. The taxpayers claimed a theft loss but the court held that the IRS properly denied the deduction because no criminal conduct by the contractor was shown. **Wanchek v. Comm'r, T.C. Memo. 2007-366**.

TRAVEL EXPENSES. Rev. Rul. 67-438, 1967-2 C.B. 82, holds that, for purposes of § 162(a)(2), the home of a naval officer who is assigned to permanent duty aboard a ship that has regular eating and living facilities, such as an aircraft carrier, battleship, cruiser, destroyer, submarine, or supply ship, is aboard the ship. In a Chief Counsel Advice letter, the IRS ruled that the ruling applies equally to Navy enlisted personnel who are on permanent duty aboard a ship that has regular eating and living facilities. A naval officer or enlisted member whose home for purposes of I.R.C. § 162(a)(2) is a naval vessel may deduct unreimbursed expenses for travel away from home that are properly substantiated and deductible under I.R.C. § 162(a)(2). The IRS noted that a naval vessel in dry dock is not the home of its crew (officer or enlisted) for these purposes. **CCA Ltr. Rul. 200750017, Oct. 29, 2007**.

TRUSTS. The taxpayers, husband and wife, established several tiered business trust entities and transferred their personal and real property to the trusts, as well as assigned all personal income to the trusts. The trusts were set up using a tax avoidance scheme sold by another company. The entities were carefully operated with all business formalities and even generated income from selling the same tax schemes to other persons. The court held that the trusts and business entities were shams without economic substance because the taxpayers continued to control all the assets and personally earned all the income; therefore, the taxpayers were personally liable for the income tax on the income. **Richardson v. Comm'r, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,101 (11th Cir. 2007), *aff'g*, T.C. Memo. 2006-69**.

The taxpayer contributed a personal residence to a trust. The

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residence included several acres of land and seven buildings, including a separate small house. The taxpayer had allowed friends and family to use the small house rent-free but now rented the small house to an unrelated party. Other than routine maintenance, the taxpayer provided no services to the tenant. Citing an example in Treas. Reg. § 25.2702-5(d), the IRS ruled that the entire property was a qualified residence and the trust was a qualified personal residence trust. **Ltr. Rul. 200751022, Sept. 5, 2007**.

The taxpayer established a business trust and transferred personal and business assets to the trust, although the taxpayer performed all the business activities. The court held that the trust was a sham and that all trust income was taxable to the taxpayer and the actual income earner. **Sparkman v. Comm'r, 2008-1 U.S. Tax Cas. (CCH) ¶ 50,102 (9th Cir. 2007), *aff'g*, T.C. Memo. 2005-136**.

IN THE NEWS

FARM BILL TAX PROVISIONS. The Senate addition to the Farm Bill, HR 2419, *which has not become law* includes the following tax provisions:

Sec. 12201, conservation reserve tax credit (equal to the rental value of land enrolled in CRP).

Sec. 12202, eliminates SECA on CRP payments for those receiving social security benefits, effective after 2007.

Sec. 12203, permanent extension of contribution of real property for conservation purposes.

Sec. 12207, credit for wetlands reserve and grasslands reserve.

Sec. 12212, deduction (60%) for qualified timber gains.

Sec. 12301, credit for small wind energy projects (30%) under I.R.C. § 25D.

Sec. 12302, electric transmission easement payments not taxable.

Sec. 12315, reduced ethanol tax credit from 51 cents per gallon to 46 cents per gallon.

Sec. 12402, installment sale of single purpose agricultural and horticultural structures and trees and vines producing fruits and nuts --recapture income can be spread over the term of the contract.

Sec. 12403, I.R.C. § 1031 treatment for stock in ditch companies and others.

Sec. 12407, farm machinery and equipment eligible for 5-year depreciation rather than 7-year.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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