The regulation goes on to state that the successor's basis for the property interest is determined by adding to (or subtracting from) the adjusted uniform basis assigned to the remainder interest the difference between the value of the remainder interest included in the remainderman's estate, and the basis of the remainder interest prior to the remainderman's death.[10]

An example in the regulations[11] shows how that calculation is handled.

Remember, for the distribution of property of decedents, all titles to property acquired by bequest, devise or inheritance relate back to the death of the decedent, even though the interest of the person taking the title was, at the death of the decedent, legal, equitable, vested, contingent, general, specific, residual, conditional, executory or otherwise.[12]

So what happens at the death of the remainder holder after the death of the life tenant?

In a case that arose before the regulations[13] became final, the taxpayer had acquired an interest from a remainder holder with a life estate held by the grantor's spouse.[14] The question was the taxpayer's basis on sale of the property interest. The court determined that the value related to the fair market value at the death of the decedent-remainder holder from whom the taxpayer had acquired the property interest, not the value when the original testator died.

However, the current regulations, as noted above,[15] state that the basis of the remainder holder's heir, legatee or devisee for the remainder interest is determined by adding (or subtracting from) the part of the adjusted uniform basis assigned to the remainder interest the difference between the value of the remainder interest included in the remainderman's estate and the basis of the remainder interest immediately prior to the remainderman's death.[16] Those regulations became final in 1957.[17]

Of course, if the transfer was created by gift, the basis is derived under gift rules in terms of the income tax basis.[18]

ENDNOTES

[1] See Harl, "Hazards of Basing an Estate Plan on Successive Life Estates," 20 *Agric. L. Dig.* 137 (2009). See generally 8 Harl, *Agricultural Law* §§ 62.02, 43.02[6] (2009); Harl, *Agricultural Law Manual* § 5.02[4] (2009); 1 Harl, *Farm Income Tax Manual* § 3.20[4][l][i][F] (2010 ed.).

[2] See I.R.C. § 1014(a).

[3] Treas. Reg. § 1.1014-4(a)(1). See Pierson v. Comm'r, 253 F.2d 928 (3d Cir. 1958). See also Dyer v. Comm'r, T.C. Memo. 1961-141 (basis of stock fixed at fair market value on March 1, 1913 and not at death of life tenant).

[4] Treas. Reg. § 1.1014-4(a)(1).

[5] Treas. Reg. §§ 1.1014-4(a), 1014-5.

[6] Treas. Reg. § 1.1014-5(a)(3).

[7] *Id.*

[8] Treas. Reg. § 1.1014-8(a)(1).

[9] Treas. Reg. § 1.1014-8(a)(1).

[10] *Id.*

[11] Treas. Reg. § 1.1014-8(b).

[12] Treas. Reg. § 1.1014-4(b).

[13] Treas. Reg. § 1.1014-8(a).

[14] Bauer v. United States, 168 F. Supp. 539 (Cls. Ct. 1958).

[15] See note 9 *supra*.

[16] Treas. Reg. § 1.1014-8(a)(1).

[17] T.D. 6265, Nov. 6, 1957.

[18] I.R.C. § 1015.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtors, husband and wife, did not file returns or pay taxes for 2000 through 2004. The debtors filed for Chapter 11 in March of 2006, which was dismissed in November 2006. The debtors filed a second Chapter 11 case in September 2007 and that case was dismissed for bad faith in December 2007. A creditor filed the current involuntary Chapter 7 case in February 2008. In June 2005 the IRS issued the Debtors Collection Due Process Notices of Intent to Levy for all tax years. The debtors filed requests for collection due process hearings, some of which were later withdrawn. The debtors argued that their taxes for 2000 through 2004 were dischargeable because the returns were due more than three years before the filing of the petition. The court held that the running of the three year period was tolled during the prior bankruptcy cases and during the time, plus 90 days, that the requests for collection due process were active. After removing these tolled periods, the petition was filed within three years of the tax returns for the tax years; therefore, the taxes were nondischargeable. ***In re* Abir, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,201 (E.D. N.Y. 2010)**.

In a Chief Counsel Advice letter, the IRS ruled that some tax claims are not discharged in a general Chapter 13 discharge: (1) employment taxes withheld from employees' wages; (2) taxes for which no return was filed or for which a return was late-filed within two years before the petition date; and (3) taxes for which the debtor filed a fraudulent return or willfully attempted to evade or defeat taxes. Also nondischargeable are tax debts where the debtor fails to

list the IRS on its schedule of liabilities or otherwise notify the IRS of the bankruptcy case. This exception does not apply, however, if the IRS learns of the bankruptcy proceeding in time to file a timely claim. In addition, the IRS noted *In re Pardee, 193 F.3d 1083 (9th Cir. 1999)* which upheld a plan provision that a nondischargeable claim was dischargeable where the plan was confirmed without objection. The IRS also ruled that, if a tax debt was dischargeable, pre- and post-petition interest was dischargeable. If the tax debt was nondischargeable, the pre- and post-petition interest was nondischargeable. **CCA Ltr. Rul. 201005029, Oct. 21, 2009**.

FEDERAL FARM PROGRAMS

BIOMASS CROP ASSISTANCE PROGRAM. The CCC has issued proposed regulations to implement the new Biomass Crop Assistance Program (BCAP) authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). BCAP is intended to assist agricultural and forest land owners and operators with the establishment and production of eligible crops including woody biomass in selected project areas for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility. The proposed regulations specify the requirements for eligible participants, biomass conversion facilities, and biomass crops and materials. **75 Fed. Reg. 6263 (Feb. 8, 2010)**.

PACKERS AND STOCKYARDS ACT. The GIPSA has adopted as final regulations amending the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act), regarding the registration of market agencies and dealers. Under the current regulations, there was no expiration date or renewal process for the registration of a market agency or dealer under the P&S Act. Under the final rule, a market agency or dealer's registration will not expire, provided that the market agency or dealer timely files its annual reports with GIPSA. **75 Fed. Reg. 6299 (Feb. 9, 2010)**.

SPECIALTY CROP BLOCK GRANT PROGRAM. The AMS has announced the availability, of $55,000,000 in grant funds, less USDA administrative costs, to solely enhance the competitiveness of specialty crops. State departments of agriculture, including agencies, commissions, or departments of a state government responsible for agriculture within the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, are eligible to apply. **75 Fed. Reg. 5561 (Feb. 3, 2010)**.

FEDERAL ESTATE AND GIFT TAXATION

CHARITABLE DEDUCTION. The decedent's will had no provision for bequeathing the residuary estate. The trustee of a charitable trust established by the decedent claimed that the decedent had intended to bequeath the residuary estate to the trust and that the omission was merely a scrivener's error. The trust and an heir settled the claim with the residuary estate passing in part to both parties. The estate sought a ruling that the amount passing to the charitable trust was eligible for the charitable deduction. The IRS ruled that, under state law, extrinsic evidence to prove the decedent's intent was admissable only where the will was ambiguous. Because the will was only incomplete, the IRS ruled that the state presumption was that the residuary estate passed by intestacy; therefore, the charitable trust did not have an enforceable right to the residuary estate and the estate could not claim a deduction for the amount of the residuary estate passing to the trust. **Ltr. Rul. 201004022, Sept. 15, 2009**.

DISCLAIMERS. The taxpayer held a contingent interest in distributions from termination of a trust. Within nine months after the taxpayer reached the age of majority, the taxpayer filed a written disclaimer of the contingent interest in the distribution. The IRS ruled that the disclaimer would be effective and would not result in any taxable gift. **Ltr. Rul. 201004006, Oct. 21, 2009**.

ESTATE PROPERTY. The decedent was part of a large family in which the members owned a portion of 45,000 acres of timberland either directly or in trust. In order to provide for efficient management of the property, the family transferred its interests in the timberland to a limited partnership. The decedent owned some interests in the limited partnership and other timberland. In keeping with the purpose of the limited partnership, the decedent created a family limited partnership and transferred the timberland and limited partnership interests to the FLP. The court held that the transferred property was not included in the decedent's estate because the transfer was a bona fide sale since the sale was made for substantial non-tax purposes: the efficient management of the property, the avoidance of tort liability for the property, and to reduce the estate through gifts of interests in the FLP. In addition, the decedent had received an interest in the FLP with a proportionate value to the assets contributed to the FLP, the decedent's capital account reflected the value of the assets, and any distributions decreased the distributee's capital account. **Estate of Shurtz v. Comm'r, T.C. Memo. 2010-21**.

GIFTS. The IRS has issued guidance under I.R.C. § 2511(c) enacted in section 511(e) of the Economic Growth and Tax Relief Reconciliation Act of 2001, *Pub. L. No. 107-16, 115 Stat. 71 (2001)*, and amended in section 411(g)(1) of the Job Creation and Worker Assistance Act of 2002, *Pub. L. No. 107-147, 116 Stat. 46 (2002)*. Section 2511(c) is effective for transfers made after December 31, 2009, and before January 1, 2011, and generally provides that the gift tax shall apply to transfers in trust or otherwise, whether direct or indirect. Under Treas. Reg. § 25.2511-2(b), a gift is complete when the donor parts with sufficient dominion and control as to leave in the donor no power to change its disposition. I.R.C. § 2511(c) provides that, notwithstanding any other provision of I.R.C. § 2511 and except as provided in regulations, a transfer in trust shall be treated as a transfer of property by gift unless the trust is treated as wholly owned by the donor or the donor's spouse

under subpart E of part I of subchapter J of chapter 1. The Joint Committee on Taxation's explanation of section 2511(c) provides that certain transfers in trust are treated as transfers of property by gift even though such transfers would have been regarded as incomplete gifts, or would not have been treated as transfers under the gift tax provisions in effect prior to 2010. Joint Committee on Taxation, Technical Explanation of the "Job Creation and Worker Assistance Act of 2002" *(JCX-12-02), March 6, 2002*. Some taxpayers may have inaccurately interpreted I.R.C. § 2511(c) as excluding from the gift tax transfers to a trust treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1, even though those transfers would otherwise be taxable under Chapter 12. The provisions of Chapter 12 regarding the substantive law applicable to the gift tax were not amended by EGTRRA, and those provisions continue to apply to all transfers made by donors during 2010. Section 2511(c) is an addition to those substantive law provisions and is applicable to transfers made in 2010. Section 2511(c) broadens the types of transfers subject to the transfer tax under Chapter 12 to include certain transfers to trusts that, before 2010, would have been considered incomplete and, thus, not subject to the gift tax. Accordingly, each transfer made in 2010 to a trust that is not treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1 is considered to be a transfer by gift of the entire interest in the property under section 2511(c). The provisions of Chapter 12 as in effect on December 31, 2009, continue to apply (both before and during 2010) to all transfers made to any other trust to determine whether the transfer is subject to gift tax. **Notice 2010-19, I.R.B. 2010-7**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTIONS. The IRS has issued a notice in English, Spanish, French and Haitian Creole concerning the charitable deduction for contributions to Haiti. A new law, Pub. L. No. 111-126, signed January 22, 2010, allows taxpayers to choose to deduct certain charitable contributions of money on their 2009 tax return instead of their 2010 return. The contributions must have been made after January 11, 2010, and before March 1, 2010, for the relief of victims in areas affected by the January 12, 2010, earthquake in Haiti. Contributions of money include contributions made by cash, check, money order, credit card, charge card, debit card, or via cell phone. The new law was enacted after the 2009 forms, instructions, and publications had already been printed. When preparing the 2009 tax return, taxpayers may complete the forms as if these contributions were made on December 31, 2009, instead of in 2010. To deduct your charitable contributions, taxpayers must itemize deductions on Schedule A (Form 1040) or Schedule A (Form 1040NR). The contribution must be made to a qualified organization and meet all other requirements for charitable contribution deductions. However, if taxpayers made the contribution by phone or text message, a telephone bill showing the name of the donee organization, the date of the contribution, and the amount of the contribution will satisfy the recordkeeping requirement. **Notice 1396**.

DOMESTIC PRODUCTION DEDUCTION. The taxpayer was a non-exempt farmer's marketing and purchasing agricultural cooperative. The cooperative made payments to members which were qualified per-unit retain allocations because they were (1) distributed with respect to the crops that the cooperative stored, processed and marketed for its patrons; (2) determined without reference to the cooperative's net earnings; and (3) paid pursuant to a contract with the patrons establishing the necessary pre-existing agreement and obligation, and within the payment period of I.R.C. § 1382(d). The IRS ruled that the cooperative was allowed to add back these amounts paid to members as net proceeds in calculating its qualified production activities income under I.R.C. § 199(d)(3)(C). **Ltr. Rul. 201005015, Oct. 28, 2009**.

EARNED INCOME TAX CREDIT. The IRS has announced information on the expanded earned income tax credit (EITC). For tax years 2009 and 2010, the American Recovery and Reinvestment Act created a new category for families with three or more children and expanded the maximum benefit for this category. To qualify for the EITC, earned income and adjusted gross income for individuals must each be less than: (1) $43,279 ($48,279 married filing jointly) with three or more qualifying children; (2) $40,295 ($45,295 married filing jointly) with two qualifying children; (3) $35,463 ($40,463 married filing jointly) with one qualifying child; and (4) $13,440 ($18,440 married filing jointly) with no qualifying children. The maximum credit for tax year 2009 is: (1) $5,657 with three or more qualifying children $5,028 with two qualifying children; (2) $3,043 with one qualifying child; and (3) $457 with no qualifying children. The maximum amount of investment income is $3,100 for tax year 2009. For families, there are also certain requirements for child residency and relationship that must be met. Additional eligibility information is available in FS-2010-11 and on the Web at IRS.gov/EITC. Another new provision adds to the definition of a "qualifying child" in that the child must be younger than the person claiming the child unless the child is totally and permanently disabled any time during the year. The child cannot have filed a joint return other than to claim a refund. Also new for 2009, if a qualifying child can be claimed by either a parent or another person, the other person must have an AGI higher than the parent in order to claim the child for EITC purposes. **IR-2010-14**.

EDUCATION CREDITS. The IRS has published a summary of five methods of reducing the costs of higher education: (1) *The American Opportunity Credit*. This credit can help parents and students pay part of the cost of the first four years of college. The American Recovery and Reinvestment Act modifies the existing Hope Credit for tax years 2009 and 2010, making it available to a broader range of taxpayers. Eligible taxpayers may qualify for the maximum annual credit of $2,500 per student. Generally, 40 percent of the credit is refundable, which means that taxpayers may be able to receive up to $1,000, even if taxpayers owe no taxes. (2) *The Hope Credit*. The credit can help students and parents pay part of the cost of the first two years of college. This credit generally applies to 2008 and earlier tax years. However, for tax year 2009 a special expanded Hope Credit of up to $3,600 may be claimed for a student attending college in a Midwestern disaster area as long as there is no claim

of an American Opportunity Tax Credit for any other student in 2009. (3) *The Lifetime Learning Credit*. This credit can help pay for undergraduate, graduate and professional degree courses – including courses to improve job skills – regardless of the number of years in the program. Eligible taxpayers may qualify for up to $2,000 – $4,000 for a student in a Midwestern disaster area – per tax return. (4) *Enhanced benefits for 529 college savings plans*. Certain computer technology purchases are now added to the list of college expenses that can be paid for by a qualified tuition program, commonly referred to as a 529 plan. For 2009 and 2010, the law expands the definition of qualified higher education expenses to include expenses for computer technology and equipment or internet access and related services. (5) *Tuition and fees deduction*. Students and their parents may be able to deduct qualified college tuition and related expenses of up to $4,000. This deduction is an adjustment to income, which means the deduction will reduce the amount of income subject to tax. The tuition and fees deduction may be beneficial to taxpayers who do not qualify for the American Opportunity, Hope, or Lifetime Learning credits. However, the IRS notes that taxpayers cannot claim the American Opportunity and the Hope and Lifetime Learning credits for the same student in the same year. Taxpayers also cannot claim any of the credits if a tuition and fees deduction is claimed for the same student in the same year. To qualify for an education credit, taxpayers must pay post-secondary tuition and certain related expenses for the taxpayer, a spouse or a dependent. The credit may be claimed by the parent or the student, but not by both. Students who are claimed as a dependent cannot claim the credit. For more information, see Publication 970, Tax Benefits for Education, which can be obtained online at www.IRS.gov. **IRS Tax Tip 2010-30**.

EMPLOYEE BENEFITS. The taxpayer was a city which had employees eligible to receive work-related articles of clothing and accessories, including tee shirts, polo shirts, sweaters, jackets, swimsuits, socks, sweatshirts, coats, pants, jeans, shorts, gloves, hats, fanny packs, belts, clip-on ties, and equipment bags. Most of the items bear the taxpayer's logo or other information identifying the individual as an employee of the taxpayer. Employees were required to wear the clothing items while performing services for the taxpayer. On average, employees receive less than one item per year. The IRS ruled that the value of the clothing and other accessories received by the employees was not income to the employees under I.R.C. § 132(a)(4) as a *de minimus* fringe benefit because the taxpayer provided evidence objectively demonstrating that the items were of low value, were not distributed too frequently, and it would be administratively impractical to account for the value of the items. **Ltr. Rul. 201005014, Oct. 28, 2009**.

FIRST-TIME HOMEBUYER CREDIT. The IRS has provided additional clarification regarding documentation requirements on the First-Time Homebuyer Credit. The IRS encourages buyers seeking the homebuyer credit to sign the settlement statement when they file their tax return -- even in cases where the settlement form does not include a signature line. The IRS recognizes that elements of the settlement document, often a Form HUD-1, may vary from jurisdiction to jurisdiction and may not reflect the signatures of both the buyer and seller. While the Form 5405 instructions indicate that a properly executed settlement statement should show the signatures of all parties, the IRS has clarified that it will accept a settlement statement if it is complete and valid according to local law. In areas where signatures are not required on the settlement document, the IRS encourages the buyer to sign the settlement statement prior to attaching it to the tax return. In situations where the signature of the seller is not on the settlement document, the IRS advises the buyer to still sign the document. **E-News for Tax Professionals 2010-08**.

FRIVOLOUS TAX RETURNS. The Internal Revenue Service has released the 2010 version of its discussion and rebuttal of many of the more common frivolous arguments made by individuals and groups that oppose compliance with federal tax laws. **The Truth About Frivolous Tax Arguments. http://www.irs.gov/pub/irs-utl/friv_tax.pdf**

GENERAL BUSINESS CREDIT. Section 8214(a) of the Small Business and Work Opportunity Tax Act of 2007 added I.R.C. § 38(c)(4)(B)(viii) to include the credit determined under I.R.C. § 51 (provides for a Work Opportunity Tax Credit for employers who hire individuals who are members of targeted groups.) in the list of specified credits that may offset the alternative minimum tax liability. Section 8214(b) of the Act provides that the amendment made by section 8214 applies to credits determined under I.R.C. § 51 in taxable years beginning after 2006 and to carrybacks of such credits. Under I.R.C. § 38(c)(4), the tentative minimum tax is treated as zero for purposes of determining the tax liability limitation for the I.R.C. § 51 credit, but only for I.R.C. § 51 credits determined in taxable years beginning after 2006. In a Chief Counsel Advice e-mail, the IRS ruled that any I.R.C. § 51 credits determined in taxable years beginning before 2007 may not offset any alternative minimum tax liability even if the credit is carried forward to a taxable year beginning after 2006. **CCA Ltr. Rul. 201005039, Jan. 7, 2010**.

GENERAL WELFARE PAYMENTS EXCLUSION. A state created an economic stimulus program which provided payments to individuals who had sufficient income to participate in the program. Although the ruling does not specifically state what the program involved, it apparently was a home retention program. The grants were made to individuals in a certain financial condition and had income limitations but were not based on need. The IRS ruled that the grant payments were included in the recipients' taxable income because the payments were not eligible for the general welfare exclusion and were not purchase price reductions. **Ltr. Rul. 201004005, Oct. 21, 2009**.

INCOME. To ensure taxpayers are familiar with the difference between taxable and non-taxable income, the Internal Revenue Service offers these common examples of items that are not included in your income:

Adoption expense reimbursements for qualifying expenses
Child support payments
Gifts, bequests and inheritances
Workers' compensation benefits
Meals and lodging for the convenience of your employer
Compensatory damages awarded for physical injury or physical sickness

Welfare benefits

Cash rebates from a dealer or manufacturer

Some income may be taxable under certain circumstances, but not taxable in other situations. Examples of items that may or may not be included in your income are:

Life Insurance If a taxpayer surrenders a life insurance policy for cash, the taxpayer must include in income any proceeds that are more than the cost of the life insurance policy. Life insurance proceeds, which were paid because of the insured person's death, are not taxable unless the policy was turned over for a price.

Scholarship or Fellowship Grant If a taxpayer is a candidate for a degree, the taxpayer can exclude amounts received as a qualified scholarship or fellowship. Amounts used for room and board do not qualify.

Non-cash Income Taxable income may be in a form other than cash. One example of this is bartering, which is an exchange of property or services. The fair market value of goods and services exchanged is fully taxable and must be included as income on Form 1040 of both parties. **IRS Tax Tip 2010-25**.

IRA. The taxpayer rolled over amounts from a traditional IRA to a Roth IRA. The taxpayer hired a tax professional to prepare tax returns but the preparer did not inform the taxpayer that the taxpayer did not qualify for conversion to a Roth IRA because of too much taxable income. The taxpayer sought an extension of time to recharacterize the conversion of the IRA funds to Roth IRA. The IRS granted the extension. **Ltr. Rul. 201004037, Nov. 2, 2009**.

INVESTMENT INTEREST. The taxpayers used an income tax return preparer for their return which included investment interest as well as qualified dividend income. The preparer failed to advise the taxpayers that an election was available to treat the qualified dividend income as investment income under I.R.C. § 163(d)(4)(B). A subsequent audit by a CPA revealed the eligibility for the election and the taxpayer requested an extension of time to file the election. The IRS granted the extension. **Ltr. Rul. 201004003, Oct. 21, 2009**.

MILEAGE DEDUCTION. The taxpayer was in the real estate business and used various personal and business vehicles in the business. For the first tax year, the taxpayer claimed to have kept a mileage log but did not produce the log. For the second and third years, the taxpayer presented written logs of daily total business miles but the logs did not include specific destinations, purpose of the trip or the mileage of each trip. The court held that the mileage deductions were properly denied by the IRS for lack of substantiation. **Royster v. Comm'r, T.C. Memo. 2010-16**.

NEW VEHICLE SALES AND EXCISE TAX DEDUCTION. The IRS has published eight facts about the new vehicle sales and excise tax deduction available for cars purchased in 2009: (1) State and local sales and excise taxes paid on up to $49,500 of the purchase price of each qualifying vehicle are deductible. (2) Qualified motor vehicles generally include new cars, light trucks, motor homes and motorcycles. (3) To qualify for the deduction, the new cars, light trucks and motorcycles must weigh 8,500 pounds or less. New motor homes are not subject to the weight limit. (4) Purchases must occur after Feb. 16, 2009, and before Jan. 1, 2010. (5) Purchases made in states without a sales tax — such as Alaska, Delaware, Hawaii, Montana, New Hampshire and Oregon — may also qualify for the deduction. Taxpayers in these states may be entitled to deduct other qualifying fees or taxes imposed by the state or local government. The fees or taxes that qualify must be assessed on the purchase of the vehicle and must be based on the vehicle's sales price or as a per unit fee. (6) This deduction can be taken regardless of whether the buyers itemize their deductions or choose the standard deduction. Taxpayers who do not itemize will add this additional amount to the standard deduction on their 2009 tax return. (7) The amount of the deduction is phased out for taxpayers whose modified adjusted gross income is between $125,000 and $135,000 for individual filers and between $250,000 and $260,000 for joint filers. (8) Taxpayers who do not itemize must complete Schedule L, Standard Deduction for Certain Filers to claim the deduction. **IRS Tax Tip 2010-26**.

PENSION PLANS. For plans beginning in February 2010 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 4.60 percent, the corporate bond weighted average is 6.41 percent, and the 90 percent to 100 percent permissible range is 5.77 percent to 6.41 percent. **Notice 2010-20, I.R.B. 2010-8**.

S CORPORATIONS

PASSIVE INVESTMENT INCOME. The taxpayer was an S corporation which owned rental properties. The taxpayer had employees who directly performed services relating to the properties from the taxpayer's management office. The taxpayer also contracted with a management company as its agent. The taxpayer through its employees or through the management company, provided services with respect to the leasing of the properties, including, but not limited to: hiring and dismissing employees that maintain and operate the properties; approving and making expenditures to maintain the properties; negotiating contracts for insurance, utilities, and other services; maintaining the properties; listing the properties for lease; approving leases and subleases; collecting rents; and handling complaints of tenants and subtenants. The IRS ruled that the rent income from the properties was not passive investment income to the taxpayer. **Ltr. Rul. 201005025, Oct. 29, 2009**.

REFUNDS. In a Chief Counsel Advice e-mail, the IRS ruled that Treas. Reg. § 301.6402-2(f)(1) permits the Service to send a refund check, payable to the taxpayer, in care of an attorney or agent who has filed a power of attorney specifically authorizing him or her to receive such check. If the taxpayer would like the refund check sent to the power of attorney or attorney of record, the attorney should submit a completed Form 2848, Power of Attorney and Declaration of Representative, and have the taxpayer initial line 6 and designate the name of the representative to receive refund checks. **CCA Ltr. Rul. 201005041, Jan. 11, 2010**.

RETURNS. The IRS has published the final versions of 2009 Form 990, Return of Organization Exempt From Income Tax, and Form 990-EZ. See www.irs.gov/pub/irs-pdf/f990.pdf.

SELF-EMPLOYMENT INCOME. The taxpayer was employed as a pipeline inspector and received income from the employment which was reported as non-employee compensation on Form 1099-MISC by the employer. The taxpayer listed the

income on Schedules E and Form 1120S from an association and joint venture. The association and joint venture were found to have no separate business purpose or existence other than as a scheme to claim business deductions. The court held that, for purposes of self-employment taxes, the entities were disregarded and the business deductions disallowed except to the extent allowed by the IRS. The taxpayer's income from the employment was held to be subject to self-employment tax. The appellate court affirmed. **Pate v. Comm'r, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,214 (5th Cir. 2010),** ***aff'g*****, T.C. Memo. 2008-272**.

TRADE OR BUSINESS OF FARMING. The taxpayer was a CPA who acquired a farm in a lawsuit against a former client. The farm was rented to two tenants, one who planted and harvested soybeans on a crop share basis and one who rented the building for cash. The court held that the taxpayer was not involved in the trade or business of farming because the tenant made all of the crop decisions in the first year and no crop was planted or harvested in the second year. The court noted that the taxpayer failed to perform continuous and regular activities on the farm. **Vianello v. Comm'r, T.C. Memo. 2010-17**.

UNEMPLOYMENT BENEFITS. The IRS has issued a reminder that taxpayers who received unemployment benefits in 2009 are entitled to a special tax break when they file their 2009 federal tax returns. This tax break is part of the American Recovery and Reinvestment Act of 2009. Unemployment compensation generally includes any amounts received under the unemployment compensation laws of the United States or of a specific state. It includes state unemployment insurance benefits, railroad unemployment compensation benefits and benefits paid by a state or the District of Columbia from the Federal Unemployment Trust Fund. It does not include workers' compensation. Normally, unemployment benefits are taxable; however, under the Recovery Act, every person who receives unemployment benefits during 2009 is eligible to exclude the first $2,400 of these benefits when they file their federal tax return. For a married couple, if each spouse received unemployment compensation then each is eligible to exclude the first $2,400 of benefits. Taxpayers should receive a Form 1099-G, Certain Government Payments, which shows the total unemployment compensation paid in 2009 in box 1. Taxpayers must subtract $2,400 from the amount in box 1 of Form 1099-G to figure how much of their unemployment compensation is taxable and must be reported on the federal tax return. Do not enter less than zero. For more information, see www.IRS.gov/recovery. **IRS Tax Tips 2010-29**.

WITHHOLDING TAXES. The IRS has provided guidance for taxpayers who fail to receive a Form W-2 from an employer. (1) *Contact the employer*. Contact the employer to inquire if and when the W-2 was mailed. If it was mailed, it may have been returned to the employer because of an incorrect or incomplete address. After contacting the employer, allow a reasonable amount of time for them to resend or to issue the W-2. (2) *Contact the IRS*. If a Form W-2 is not received by February 16th, contact the IRS for assistance at 800-829-1040. The taxpayer must provide a name, address, city and state, including zip code, social security number, phone number and have the following information: employer's name, address, city and state, including zip code and phone number; dates of employment; and an estimate of the wages earned, the federal income tax withheld, and when the taxpayer worked for that employer during 2009. The estimate should be based on year-to-date information from a final pay stub or leave-and-earnings statement, if possible. (3) *File your return*. Taxpayers must still file a tax return or request an extension to file by April 15, even if the taxpayer does not receive a Form W-2. If the taxpayer has not received Form W-2 by April 15th, and has completed steps 1 and 2, the taxpayer may use Form 4852, Substitute for Form W-2, Wage and Tax Statement. Attach Form 4852 to the return, estimating income and withholding taxes as accurately as possible. There may be a delay in any refund due while the information is verified. (4) *File a Form 1040X*. On occasion, taxpayers may receive a missing Form W-2 after filing a return using Form 4852, and the information may be different from what was reported on the return. If this happens, taxpayers must amend the return by filing a Form 1040X, Amended U.S. Individual Income Tax Return. Form 4852, Form 1040X, and instructions are available on the IRS Web site, www.IRS.gov. **IRS Tax Tip 2010-28**.

LABOR

SEASONAL AGRICULTURAL LABOR. The Department of Labor has adopted as final regulations amending its regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal agricultural employment and the enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. The regulations also amend the regulations at 29 CFR part 501 to provide for enhanced enforcement under the H-2A program requirements so that workers are appropriately protected when employers fail to meet their obligations under the H-2A program. The rules will increase temporary farm worker wages by roughly a dollar an hour. Additionally, farmers looking to hire temporary workers must first post the available jobs on an electronic job registry to ensure domestic workers have an opportunity to apply for the jobs before temporary H-2A workers are hired. Further, under the new rules state work force agencies must inspect and approve of guest-worker housing before foreign workers can be brought into the country. **75 Fed. Reg. 6883 (Feb. 12, 2010)**.

IN THE NEWS

EMPLOYMENT TAX CREDIT. The New York Times has reported that "Senators Max Baucus, Democrat of Montana and chairman of the Finance Committee, and Senator Charles E. Grassley of Iowa, the panel's senior Republican, released a draft $85 billion plan that would give employers a payroll tax exemption for hiring those who have been unemployed for at least 60 days. The bill would also provide a $1,000 income tax credit for new workers retained for 52 weeks." A draft of the bill is available here: http://www.finance.senate.gov/sitepages/legislation.htm. **Hulse, "Baucus, Grassley Propose New Jobs Bill," New York Times Online, Feb. 11, 2010**.

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by Neil E. Harl

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Tuesday, May 4, 2010

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
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
Farm lease deductions
Prepaid expenses
Preproductive period expense provisions
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
New 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.

Wednesday, May 5, 2010

FARM ESTATE AND BUSINESS PLANNING

The Liquidity Problem

Property Held in Co-ownership

Federal estate tax treatment of joint tenancy
Severing joint tenancies
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
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
Federal estate tax liens
Undervaluations of property
Reopening an examination

Gifts

Use of the Trust

The General Partnership

Limited Partnerships

Limited Liability Companies

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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