CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

DISCHARGE. The debtor had borrowed funds from a bank and granted a security interest in 155 cattle as collateral for the loan. The debtor defaulted on the loan and sold all the cattle, remitting only a portion of the proceeds as payment for the loan. The bank obtained a judgment on the loan before the debtor filed for Chapter 7. The bank sought a declaration that its claim on the judgment was nondischargeable under either Section 523(a)(2)(A) or Section 523(a)(6). The bank argued that the debt was nondischargeable under Section 523(a)(2)(A) because the debtor obtained the loan under false pretenses since the debtor knew at the time of the loan application that the collateral cattle were going to be sold. The court held that the debt was not nondischargeable under Section 523(a)(2)(A) because the bank failed to show that the debtor did not own the required cattle when the loan was made. However, the court held that the debt was nondischargeable under Section 523(a)(6) because the debtor sold the cattle without remitting enough of the proceeds to pay off the loan. The court held that the debtor knew or should have known that the sale of the cattle would injure the bank if the proceeds were not applied to the debt. **In re Taylor, 2011 Bankr. LEXIS 863 (Bankr. E.D. Ky. 2011)**.

FEDERAL TAX

DISCHARGE. The debtors, husband and wife, invested in two offshore tax shelters and claimed loss deductions from those investments which were used to offset investment income. The losses were disallowed, resulting in substantial tax assessments just at a time when the debtors' other income was lost. The debtors filed for Chapter 11 and sought a discharge of the taxes still owed at the time. The court refused to except the taxes from discharge on the basis of fraudulent returns because the debtors received professional investment advice which was extremely complicated. However, the court found that the debtors continued to maintain a lavish lifestyle even after learning that they owed the assessed taxes; therefore, the court held that the taxes were non-dischargeable for attempt to evade payment of the taxes. The court also held that the taxes were dischargeable as to the wife because the court found that she did not participate in the investments and had limited understanding of the complicated investments, the husband's financial condition or the husband's intent to not pay the taxes. ***In re* Hawkins, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,295 (N.D. Calif. 2011), *aff'g*, 2010-1 U.S. Tax Cas. (CCH) ¶ 50,365 (Bankr. N.D. Calif. 2010)**.

The debtor failed to pay taxes for 1996 through 2001. During this period the debtor, a lawyer, knew that the taxes were owed and had sufficient assets to pay the taxes. The issue for dischargeability of the taxes in the debtor's Chapter 7 bankruptcy case was whether the debtor's failure to pay the taxes was willful. The court held that the failure to pay was willful in that the debtor often cashed checks under the $10,000 reporting limit and the debtor made a significant number of cash payments without records. **United States v. Coney, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,300 (E.D. La. 2011)**.

PLAN. The debtor's confirmed Chapter 11 plan provided for 3.5 percent interest on the IRS secured claim for taxes and provided for discharge of all claims which arose post-petition and pre-confirmation. The IRS objected to the interest rate as not conforming to the prevailing commercial rate for loans equal to the claim or not in compliance with I.R.C. § 6621. The court held that the Section 6621 interest rate was relevant to but was not determinative of the interest rate to be charged during bankruptcy. The court rejected the plan's interest rate because the Bankruptcy Court failed to make sufficient findings as to the "rate the debtor would pay a commercial lender for a loan of equivalent amount and duration, considering the risk of default and any security." The IRS also objected to the discharge of all post-petition, pre-confirmation claims, arguing that the interest accrued post-petition on non-discharged taxes was not dischargeable. The court agreed and ordered the plan language to be revised to specifically exclude the interest on non-discharged tax claims. ***In re* Williams, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,294 (C.D. Calif. 2011)**.

FEDERAL FARM PROGRAMS

NO ITEMS

FEDERAL ESTATE AND GIFT TAXATION

BASIS OF ESTATE PROPERTY. The IRS has announced that Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent, is not due on April 18, 2011, and should not be filed with the final Form 1040 of persons who died in 2010. New guidance that announces the form due date will be issued at a later date and Form 8939 will be released soon after guidance is issued. Form 8939 is an informational return used to establish basis for income tax purposes of property acquired from a person who died in 2010. Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the estate tax was repealed for persons who died in 2010. The executors of the estates of certain decedents who died in 2010 were previously required to file an information return (Form 8939) relating to large transfers at death, which was due on the date of the decedent's final Form 1040 or a later date specified in regulations issued by the Treasury Department. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 reinstated the estate tax for persons who died in 2010. The law allows executors of the estates of decedents who died in 2010 to elect to have the rules of the estate tax not apply to the property of a decedent's estate. This election is to be made at the time and in the manner prescribed by the Treasury Department. Treasury and the IRS plan to issue future guidance that will provide a deadline for filing Form 8939 and for electing to have the estate tax rules not apply to the estates of persons who died in 2010. The prior deadline was April 18, which remains the deadline for filing a decedent's final Form 1040 this filing season. The forthcoming guidance will also explain the manner in which an executor of an estate may elect to have the estate tax not apply. A reasonable period of time for preparation and filing will be given between issuance of the guidance and the deadline for filing Form 8939 and for electing to have the estate tax rules not apply. The Form 8939 is not currently available, but will be made available soon after the guidance is issued. **IR-2011-33**.

GIFTS. The IRS has published information on taxation of gifts. (1) Most gifts are not subject to the gift tax. For example, there is usually no tax if a taxpayer makes a gift to a spouse or to a charity. If a taxpayer makes a gift to someone else, the gift tax usually does not apply until the value of the gifts to that person exceeds the annual exclusion for the year. For 2010 (and 2011), the annual exclusion is $13,000. (2) Gift tax returns do not need to be filed unless the taxpayer gives someone, other than a spouse, money or property worth more than the annual exclusion for that year. (3) Generally, the person who receives the gift will not have to pay any federal gift tax because of it. Also, that person will not have to pay income tax on the value of the gift received. (4) Making a gift does not ordinarily affect a taxpayer's federal income tax. A taxpayer cannot deduct the value of gifts made (other than gifts that are deductible charitable contributions). (5) The general rule is that any gift is a taxable gift. However, there are many exceptions to this rule. The following gifts are not taxable gifts: gifts that are not more than the annual exclusion for the calendar year; tuition or medical expenses paid directly to a medical or educational institution for someone; gifts to a spouse; gifts to a political organization for its use, and gifts to charities. (6) Gift Splitting – a taxpayer and spouse can make a gift up to $26,000 to a third party without making a taxable gift. The gift can be considered as made one-half by the taxpayer and one-half by the spouse. If a taxpayer splits a gift, the taxpayer must file a gift tax return to show that the taxpayer and spouse agree to use gift splitting. Taxpayers must file a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, even if half of the split gift is less than the annual exclusion. (7) Gift Tax Returns – taxpayers must file a gift tax return on Form 709, if any of the following apply: the taxpayer gave gifts to at least one person (other than a spouse) that are more than the annual exclusion for the year; the taxpayer and spouse are splitting a gift; the taxpayer gave someone (other than a spouse) a gift of a future interest that he or she cannot actually possess, enjoy, or receive income from until some time in the future; or the taxpayer gave a spouse an interest in property that will terminate due to a future event. (8) Taxpayers do not have to file a gift tax return to report gifts to political organizations and gifts made by paying someone's tuition or medical expenses. For more information see Publication 950, Introduction to Estate and Gift Taxes. **IRS Tax Tip 2011-62**.

MARITAL DEDUCTION. The decedent had created a trust, which on the decedent's death split into a marital trust and a family trust. The marital trust was to receive the largest amount of property necessary to result in no estate tax due. The remainder of the assets passed to the family trust which also qualified for the marital deduction as QTIP. The estate included a QTIP election for the family trust. However, the election was not needed because no estate tax would be due even without the QTIP deduction. The IRS ruled that the QTIP election was treated as null and void for transfer tax purposes under *Rev. Proc. 2001-38, 2001-1 C.B. 1335*, because the QTIP election was not necessary to reduce the estate tax liability to zero. **TAM Ltr. Rul. 201112001, Nov. 29, 2010**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer operated a handyman business which performed a variety of construction and maintenance work for clients. The taxpayer claimed business expenses for casual labor (workers hired to assist on a job), meals and entertainment, truck expenses, telephone and legal expenses. The taxpayer did not substantiate the expenses with written records or receipts other than a weekly planner with notes on job activities. The court allowed a portion of the casual labor expenses because the court was convinced that the taxpayer did hire some extra workers. The court disallowed all of the meal and entertainment expense deduction for failure of the taxpayer to provide written substantiation of the purpose and amount of the expenses. The court held that the amount of car and truck expenses allowed by the IRS was proper, given the lack of substantiation produced by the taxpayer. The telephone and legal expenses deductions were also disallowed for lack of substantiation. **Stroff v. Comm'r, T.C. Memo. 2011-80**.

CHARITABLE DEDUCTION. The taxpayer partnership acquired undeveloped rural land and granted a conservation easement over part of the land. The taxpayer claimed a charitable deduction based on a value of the land as land on which a large condominium development could have been built. The IRS disallowed almost all of the deduction, arguing that the land was not suitable for such a development because of multiple restrictions on development, including zoning restriction, wetlands rules, decreasing population in the area and insufficient land for the development. The court held that the taxpayer's appraisal could be disregarded because it failed to properly value the property before and after the grant of the easement and failed to account for the significant development obstacles. **Boltar, L.L.C. v. Comm'r, 136 T.C. No. 14 (2011)**.

CONSERVATION EASEMENTS. The taxpayers, husband and wife, granted a conservation easement in land to a charitable organization in 2004 and received conservation income tax credits from Colorado. The taxpayers sold most of the tax credits and reported the proceeds as short-term capital gains, using a basis of the expenses related to the creation of the easement. The IRS assessed a deficiency based on re-characterization of the proceeds as ordinary income and reduction of the basis to zero. The court held that the proceeds of the sale were taxed as short term capital gains because the tax credits were not one of the exceptions listed in I.R.C. § 1221 and the proceeds were not received in substitution for a right to ordinary income. The gains were short-term because the holding period of the tax credits did not include the holding period for the land. The court also held that the expenses of creating the conservation easements did not create any tax basis for the tax credits sold because the taxpayers did not acquire the tax credits by purchase. **Tempel v. Comm'r, 136 T.C. No. 15 (2011)**.

COURT AWARDS AND SETTLEMENTS. The taxpayer filed a suit against a former employer for gender, religion and race discrimination. The taxpayer settled for the amount of medical expenses after being told that the settlement would not be taxed. However, the settlement agreement made no mention of the purpose of the payment except to settle the lawsuit. The court held that the settlement payment was taxable income because the taxpayer failed to provide evidence that the payment was made in compensation for medical expenses. **Espinoza v. Comm'r, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,306 (5th Cir. 2011), *aff'g*, T.C. Memo. 2010-53**.

DEPRECIATION. The IRS has issued a revenue procedure which provides guidance under Section 2022(a) of the Small Business Jobs Act of 2010, Pub. L. No. 111-240, 124 Stat. 2504 (2010) (SBJA), and § 401(a) and (b) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (2010) (TRUIRJCA). The procedures provide a safe harbor method of accounting to deduct depreciation on a passenger automobiles in the first tax year succeeding the placed-in-service year of the vehicle. **Rev. Proc. 2011-26, I.R.B. 2011-16**.

DISASTER LOSSES. The IRS has issued guidance that designates the earthquake and tsunami in Japan in March 2011 as a qualified disaster for federal tax purposes. This guidance affects recipients of disaster relief payments as well as employer-sponsored private foundations. The guidance allows recipients of qualified disaster relief payments to exclude those payments from income on their tax returns. Also, the guidance allows employer-sponsored private foundations to assist employee victims in areas affected by the March 2011 earthquake and tsunami in Japan without affecting their tax-exempt status. Under the tax law, a private foundation that is employer-sponsored may make qualified disaster relief payments to employees affected by a qualified disaster. These payments generally include amounts to cover necessary personal, family, living or funeral expenses that were not covered by insurance. They also include expenses to repair or rehabilitate personal residences or repair or replace the contents to the extent that they were not covered by insurance. Because of its catastrophic nature, the earthquake and tsunami in Japan that occurred in March 2011 has been determined by the IRS to be a qualified disaster for purposes of the federal tax law. The IRS will presume that qualified disaster relief payments made by an employer-sponsored private foundation to employees and their family members in areas affected by the earthquake and tsunami in Japan are consistent with the foundation's charitable purposes. **Notice 2011-32, I.R.B. 2011-18**.

On March 17, 2011, the President determined that certain areas in Illinois are 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 31, 2011. **FEMA-1960-DR.** On March 23, 2011, the President determined that certain areas in Missouri are eligible for assistance from the government under the Act as a result of a severe winter storm which began on January 31, 2011. **FEMA-1961-DR.** On March 24, 2011, the President determined that certain areas in New Mexico are eligible for assistance from the government under the Act as a result of a severe winter storm which began on February 1, 2011. **FEMA-1962-DR.** On March 25, 2011, the President determined that certain areas in Washington are eligible for assistance from the government under the Act as a result of a severe winter storm, flooding and landslides which began on January 11, 2011. **FEMA-1963-DR.** On March 25, 2011, the President determined that certain areas in Oregon are eligible for assistance from the government under the Act as a result of a tsunami wave surge which began on March 11, 2011. **FEMA-1964-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2010 federal income tax returns. See I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. During a marriage, the taxpayer's spouse purchased an automobile with an installment contract. Although the contract had the signature purporting to be the taxpayer's, the taxpayer denied that the signature was the taxpayer's. The taxpayer claimed no knowledge of the car, the purchase or the installment agreement. The couple later divorced and the installment contract was terminated with a portion of the debt cancelled. The taxpayer received a Form 1099-C showing the cancellation of the debt. The court believed the taxpayer and held that the cancelation of the debt was not discharge of indebtedness to the taxpayer. **Marchisio v. Comm'r, T.C. Summary Op. 2011-39**.

HEALTH INSURANCE. The IRS has issued interim guidance on informational reporting to employees of the cost of their employer-sponsored group health plan coverage. This informational reporting is required under I.R.C. § 6051(a)(14), enacted as part of the Affordable Care Act to provide useful and comparable consumer information to employees on the cost of their health care coverage. The IRS stated that this reporting to employees is for their information only, to inform them of the cost of their health care coverage, and does not cause excludable employer-provided health care coverage to become taxable. The IRS stated that nothing in I.R.C. § 6051(a)(14), this notice, or the additional guidance that is contemplated under I.R.C. § 6051(a)(14), causes or will cause otherwise excludable employer-provided health care coverage to become taxable. The interim guidance generally applies beginning with 2012 Forms W-2 (that is, the forms required for the calendar year 2012 that employers generally are required to furnish to employees in January 2013 and then file with the Social Security Administration (SSA)). Employers are not required to report the cost of health coverage on any forms required to be furnished to employees prior to January 2013. See *Notice 2010-69, 2010-2 C.B. 567*. However, any employers that choose to report earlier (on the

2011 Forms W-2 generally furnished to employees in January 2012) may look to this notice for guidance regarding that voluntary earlier reporting. The notice also provides additional transition relief for certain employers and with respect to certain types of employer-sponsored coverage. This transition relief will continue at least through the 2012 Forms W-2 which are required to be furnished to employees in January 2013. In other words, those employers to which the additional transition relief applies (which includes smaller employers that are required to file fewer than 250 2011 Forms W-2) will not be required to report the cost of health coverage on any forms required to be furnished to employees prior to January 2014. This transition relief will continue until the issuance of further guidance. **Notice 2011-28, I.R.B. 2011-16**.

HOBBY LOSSES. The taxpayers, husband and wife, purchased a run-down farm, cleared the land, repaired fences and prepared the ground for hay crops. The wife's father lived on the property during the years involved, assisted in the property preparation and provided advice on raising crops and livestock. The taxpayer purchased cattle to pasture on the property. The court held that the farm was operated with the intent to make a profit because (1) although there was some delay in preparing the ground and constructing fences, the delay was caused by the fact that the taxpayers did most of the work themselves; (2) the wife's father provided expert advice; (3) the taxpayer did most of the work themselves and did not derive a substantial amount of personal pleasure from the activity; (4) the work performed increased the value of the property; and (5) although the activity had only losses, the loss period was not unreasonable for a new farm in poor condition when purchased. The court noted, but did not discuss the taxpayer's substantial recordkeeping activities which other courts have given more weight in determining profit motive. **Stromatt v. Comm'r, T.C. Summary Op. 2011-42**.

INFORMATION REPORTING. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, extended information reporting beginning in 2012. Section 9006 of Public Law 111-148 entitled, "Expansion of Information Reporting Requirements" amended I.R.C. § 6041(a) and adds I.R.C. §§ 6041(h) and 6041(i), all effective for payments made after December 31, 2011. Section 9006(a) extended the reporting requirements to all corporations except for corporations exempt from tax under I.R.C. § 501(a) which includes corporations organized and qualified under I.R.C. § 501(c) and I.R.C. § 501(d). The same subsection added subsection (h) to I.R.C. § 6041 to make it clear that despite the regulations issued previously, the term "person" in Section 6041 includes all corporations not exempt under I.R.C. § 501(c) and I.R.C. § 501(d). This broadened the information reporting to include more corporations than previously. Section 9006(b) amended I.R.C. § 6041(a) for all taxpayers, corporate and non-corporate, in three ways — (1) Subsection 9006(b)(1) inserted "amounts in consideration for property" after "wages" in I.R.C. § 6041(a), (2) inserted "gross proceeds," after "emoluments, or other" and (3) inserted "gross proceeds," after "setting forth the amount of such" so that it reads— "All persons engaged in a trade or business, and making payment in the course of such trade or business to another person, of rent, salaries, wages, *amounts in consideration for property*, premiums, annuities, compensations, remunerations, emoluments, or other *gross proceeds*, fixed or determinable gains, profits, and income . . . of $600 or more in any taxable year . . . shall render a true and accurate return. . . setting forth the amount of such *gross proceeds*, gains, profits, and income and the name and address of the recipient of such payment." [Amendment italicized] The effect is to extend information reporting, usually on Form 1099, to *amounts in consideration for property* and *gross proceeds* above $600. Subsequently, Section 2101 of the Small Business Jobs Act of 2010, Pub. L. No. 111-240, added I.R.C. § 6041(h) to provide:

> "Solely for purposes of subsection (a) and except as provided in paragraph (2), a person receiving rental income from real estate shall be considered to be engaged in a trade or business of renting property."

Effective for taxable years beginning after December 31, 2010. Pub. L. No. 111-240. The U.S. House of Representatives and U.S. Senate have both passed the same version of H.R. 4 repealing the expanded reporting requirements, including the provision designating rental income as a trade or business for purposes of I.R.C. § 6041, and the President is expected to sign the legislation.

INTEREST INCOME. The IRS has provided guidance on the tax treatment of Treasury Inflation-Protected Securities ("TIPS") issued at a premium. The rules for the taxation of TIPS (and other inflation-indexed debt instruments) are contained in Treas. Reg. § 1.1275-7. See also Treas. Reg. § 1.171-3(b) (rules for TIPS with bond premium). To date, the coupon bond method described in Treas. Reg. § 1.1275-7(d) has applied to TIPS rather than the more complex discount bond method described in Treas. Reg. § 1.1275-7(e). Under the existing regulations, the coupon bond method is not available with respect to inflation-indexed debt instruments that are issued with more than a *de minimis* amount of premium. Treas. Reg. § 1.1275-7(d)(2)(i). Due to recent financial conditions, however, the Department of the Treasury anticipates that TIPS may be issued at a premium that is more than a *de minimis* amount as determined under the principles of Treas. Reg. § 1.1273-1(d) (that is, an amount greater than .0025 times the stated principal amount of the security times the number of complete years to the security's maturity). To provide a more uniform method for the federal income taxation of TIPS, the IRS and the Department of the Treasury plan to issue regulations that will provide that taxpayers must apply the coupon bond method described in Treas. Reg. § 1.1275-7(d) with respect to TIPS issued with more than a *de minimis* amount of premium. As a result, the discount bond method described in Treas. Reg. § 1.1275-7(e) will not apply to TIPS issued with more than a *de minimis* amount of premium. The regulations will be effective for TIPS issued on or after April 8, 2011. **Notice 2011-21, I.R.B. 2011-19**.

PENSION PLANS. For plans beginning in April 2011 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 4.28 percent, the corporate bond weighted average is 6.06 percent, and the 90 percent to 100 percent permissible range is 5.45 percent to 6.06 percent. **Notice 2011-33, I.R.B. 2011-19**.

SELF-EMPLOYMENT INCOME. The taxpayer was employed as a deputy sheriff and was allowed by the employer to perform off-duty work. The off-duty work was strictly controlled and managed by the employer but the wages for the off-duty work were paid directly to the taxpayer by the entity which hired the taxpayer for the work. The court held that the off-duty compensation was self-employment income to the taxpayer. Although the employer maintained control over the amount of off-duty work allowed and maintained some control over uniforms and pay, the employer did not control the taxpayer's actual off-duty work and did not have any control over the hiring or firing of the taxpayer as to the off-duty work. **LaDue v. Comm'r, T.C. Summary Op. 2011-41**.

TAX RETURN PREPARERS. The IRS has adopted as final regulations relating to the requirement for "specified tax return preparers," generally tax return preparers who reasonably expect to file more than 10 individual income tax returns in a calendar year, to file individual income tax returns using magnetic media pursuant to I.R.C. § 6011(e)(3). The regulations reflect changes to the law made by the Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No 111-92, 123 Stat. 2997 (2009). The regulations affect specified tax return preparers who prepare and file individual income tax returns, as defined in I.R.C. § 6011(e)(3)(C). For calendar year 2011, the regulations define a specified tax return preparer as a tax return preparer who reasonably expects to file (or if the preparer is a member of a firm, the firm's members in the aggregate reasonably expect to file) 100 or more individual income tax returns during the year, while beginning January 1, 2012 a specified tax return preparer is a tax return preparer who reasonably expects to file (or if the preparer is a member of a firm, the firm's members in the aggregate reasonably expect to file) more than 10 individual income tax returns in a calendar year. **76 Fed. Reg. 17521 (March 30, 2011)**.

The IRS has published transitional guidance on the implementation of the new electronic filing requirements applicable to specified tax return preparers under I.R.C. § 6011(e)(3) and Treas. Reg. §§ 1.6011-7 and 301.6011-7, specifically regarding the filing restrictions placed upon specified tax return preparers by Treas. Reg. § 301.6011-7(a)(4)(i), effective for and only applicable to certain income tax returns filed by specified tax return preparers during calendar year 2011. **Notice 2011-27, I.R.B. 2011-17**.

The IRS has issued information for tax return preparers who are required by law to electronically file certain income tax returns for individuals, estates, and trusts. The notice provides administrative exemptions to the electronic filing requirement under I.R.C. § 6011(e)(3) and corresponding regulations. The administrative exemptions involve three categories: (1) Exempt preparers which include preparers who are members of certain religious groups; foreign preparers without social security numbers; and certain preparers ineligible for IRS e-file. (2) Exempt individual income tax returns due to a preparer's technological difficulties which include rejected returns; forms or schedules not supported by a preparer's software; and other technological difficulties. (3) Exempt individual income tax returns due to IRS e-file limitations which include returns currently not accepted electronically and required documentation or attachments not accepted electronically. These exemptions are automatic for those who meet the criteria provided in the notice. Although preparers need not apply for an administrative exemption or maintain any specific information, the burden is on the tax return preparer or specified tax return preparer to show entitlement to an administrative exemption. The IRS has created Form 8948, Preparer Explanation for Not Filing Electronically, for specified tax return preparers to explain why an individual income tax return that is able to be filed electronically was prepared and filed in paper format. **Notice 2011-26, I.R.B. 2011-17**.

The IRS has issued guidance to specified tax return preparers regarding the format and content of requests for waiver of the magnetic media (electronic) filing requirement due to undue hardship, and regarding the time and manner in which specified tax return preparers who seek an undue hardship waiver of the electronic filing requirement must submit their written requests for consideration by the IRS, under I.R.C., § 6011(e)(3) and Treas. Reg. § 301.6011-7. The revenue procedure also provides guidance to tax return preparers, specified tax return preparers, and taxpayers regarding how to document a taxpayer's choice to file an individual income tax return in paper format when the return is prepared by a tax return preparer or specified tax return preparer but filed by the taxpayer. **Rev. Proc. 2011-25, I.R.B. 2011-17**.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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The topics include:

Tuesday, May 10, 2011

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
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

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

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

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

Wednesday, May 11, 2011

FARM ESTATE AND BUSINESS PLANNING

New Legislation

The Liquidity Problem

Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special Use Valuation
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The unified credit and other credits
- Unified estate and gift tax rates
- Generation skipping transfer tax, including later GST consequences for transfers in 2010
- Basis for deaths in 2010
- Federal estate tax liens
- Undervaluations of property
- Reopening an examination

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

Use of the Trust

The General Partnership

Limited Partnerships

Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions

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

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