First, growing crops and stored crops for a non-materially participating landowner are considered to be income-in-respect-of-decedent[12] as to share rents which the decedent had a right to receive at the time of death for economic activities occurring before death.[13] The portion of the proceeds allocable to the period before death is income-in-respect-of decedent and does not receive a new income tax basis at death.[14] That portion is also includible in the gross estate for federal estate tax purposes as accrued rent.[15] The remaining amount represents ordinary income earned by the estate after the decedent's death.[16] The proceeds of sale are apportioned according to the number of days in the rental period ending with the date of the decedent's death (for the income-in-respect-of-decedent amount) and from the day after death to the end of the rental period for the ordinary income to the estate.[17] The allocation procedure has been criticized by at least one commentator.[18]

Material participation is not an election

The issue of whether a relationship of a landlord to the tenant under the lease is a material participation arrangement (which means self-employment tax is imposed during life and a new basis is received at death) or a non-material participation arrangement (no self-employment tax during life but no new basis at death) is not an election, however. It is a facts and circumstances matter.[19]

This appears to be an area where the activities of an agent or employee can be imputed to the principal (the decedent-to-be) inasmuch as it has been the general rule that, unless a statute or regulation bars imputation, the activities of an agent or principal can be imputed.[20] Therefore, if a family member, for example, can be involved in management for some substantial period before death, that could convert the lease to a material participation lease.

ENDNOTES

1 I.R.C. §§ 2031, 2033. See generally 4 Harl, *Agricultural Law* § 27.03[11][a] (2010); 5 Harl, *Agricultural Law* §§ 43.02[1][b], 43.03[1] (2010); Harl, *Agricultural Law Manual* § 5.03[1] (2010); 1 Harl, *Farm Income Tax Manual* § 2.10[3] (2010 ed.).

2 See 1 Harl, *Farm Income Tax Manual* § 2.10[3] (2010 ed.).

3 See. I.R.C. § 1402(a)(1).

4 I.R.C. § 2031.

5 I.R.C. § 2032.

6 I.R.C. § 1014(a)(2).

7 Rev. Rul. 58-436, 1958-2 C.B. 366.

8 Treas. Reg. § 20.2032-1(d).

9 *Id.*

10 See Treas. Reg. § 20.2031-1(b).

11 I.R.C. § 1402(a)(1). See Estate of Davis v. United States, 68-2 U.S. Tax Cas. (CCH) ¶ 9483 (S.D. Ill. 1968).

12 I.R.C. § 691(a).

13 Rev. Rul. 64-289, 1964-2 C.B. 173. See Davison v. United States, 292 F.2d 937 (Ct. Cl.), *cert. denied*, 368 U.S. 939 (1961). See also Gavin v. United States, 113 F.3d 802 (8th Cir. 1997) (no mention of whether lease was material participation or non-material participation).

14 I.R.C. § 1014(c).

15 See I.R.C. § 2031(a).

16 See Rev. Rul. 64-289, 1964-2 C.B. 173.

17 *Id.*

18 1 Harl, *Farm Income Tax Manual* § 2.10[3][b] (2010 ed.).

19 1 Harl, *Farm Income Tax Manual* § 2.10[3][e] (2010 ed.).

20 See 5 Harl, *Agricultural Law* § 41.06[1] (2010).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

ESTATE PROPERTY. The debtor had established an ERISA pension plan for the debtor's business. The debtor received a favorable determination letter from the IRS that the plan was tax-qualified under I.R.C. § 401. The bankruptcy trustee argued that the funds in the plan were not qualified from exemption from the bankruptcy estate because the debtor had violated the tax rules for such plans by using some of the plan funds for personal expenses. The court did not specifically rule on the issue of the tax-qualified status of the plan but held that, even if the plan was no longer qualified under the tax rules, the plan was still subject to the anti-alienation and anti-assignment rules of ERISA and excluded from the bankruptcy estate property. ***In re* Hemmer, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,153 (Bankr. S.D. Ind. 2011)**.

The Chapter 7 trustee had sought to deny discharge and to avoid preferential transfers by the debtors but the debtors reached a settlement with the trustee that required the debtors to transfer part of their farm to the trustee. After the transfer was completed, the trustee was notified by the county that the portion of the farm transferred to the trustee violated county zoning rules. The trustee petitioned the Bankruptcy Court to void the settlement agreement for mutual mistake. The Bankruptcy Court agreed and voided the settlement, causing the property to revert to the debtors and the trustee to reinstate actions to deny discharge and to avoid preferential transfers. The debtors appealed in an attempt to enforce the original settlement but the appellate court affirmed the Bankruptcy Court voidance of the settlement agreement for mutual mistake. ***In re* Grimlie, 2010 U.S. App. LEXIS 6626 (8th Cir. 2010), *aff'g*, 409 B.R. 497 (Bankr. 8th Cir. 2009)**.

The debtors initially filed for Chapter 12 and the plan was confirmed. The value of the debtors' farmland and homestead for purposes of the plan was less than the exemption plus the liens against the property. The debtors converted the case to Chapter 7 and received a discharge. After the discharge, the debtors obtained refinancing on the property based on a much higher value and used the proceeds to pay off several loans against the property and to make improvements. The refinancing was done without court permission and a creditor sought to avoid the new mortgage and to include the higher value in the bankruptcy estate property. The court held that the post-petition appreciation in the farmland value was estate property and ordered the trustee to obtain a new appraisal of the property and assess the cost/benefit of avoiding the unapproved mortgage. ***In re* Evenson, 2010 Bankr. LEXIS 3937 (Bankr. E.D. Wis. 2010)**.

CHAPTER 12

AGISTER LIEN. The debtor filed for personal Chapter 12 bankruptcy and claimed a lien on cattle owned by a corporation in which the debtor was president and sole shareholder. The corporation had granted a lien on its cattle to a bank to secure a loan. The bank had obtained a judgment for turnover of the cattle in partial satisfaction of the loan but the turnover was halted by the debtor's bankruptcy filing. The debtor claimed an agister's lien in the corporation's cattle based on the care of the cattle. The court held that the debtor was not in the business of caring for cattle and did not have a separate business relationship with the corporation which would support the existence of the lien. ***In re* Smith, 2010 Bankr. LEXIS 3917 (Bankr. D. N.M. 2010)**.

LIMITED LIABILITY COMPANY. The debtor was a limited liability company. The debtor had three managers and one of these managers (the manager) owned 90 percent of the debtor, with the remaining 10 percent owned by a company owned by the manager and three other parties. The manager filed the Chapter 12 petition and the other two managers objected to the filing, arguing that the manager did not have authority to file the petition. The manager claimed that the company had become insolvent and had lost its membership in the debtor LLC, leaving the manager as the sole member in the LLC. The court did not rule on the issue of insolvency but assumed that the company was insolvent for the purpose of this case. The court held that the insolvency of the company would automatically cause the company to lose its membership in the LLC and leave the manager with sole authority to manage the LLC affairs, including filing for Chapter 12 bankruptcy. ***In re* Hayhook Cattle Co., 2010 Bankr. LEXIS 4691 (Bankr. D. Kan. 2010)**.

FEDERAL TAX

SALE OF CHAPTER 12 ESTATE PROPERTY. A petition for review has been filed with the U.S. Supreme Court in the following case. The debtor filed for Chapter 12 and, with permission of the Bankruptcy Court, sold the debtor's farm, resulting in $29,000 of capital gain. The debtor's plan included the capital gains as an unsecured claim to be paid to the extent of other unsecured claims. The IRS objected to the plan, arguing that the capital gains were the post-petition personal responsibility of the debtor because no taxable entity was created in the bankruptcy estate. The debtor cited *In re Knudsen, 581 F.3d 696 (8th Cir. 2009), aff'g, 389 B.R. 643 (N.D. Iowa 2008), aff'g in part, 356 B.R. 480 (Bankr. N.D. Iowa 2006)*, which held that, under Section 1222(a)(2)(A), taxes generated by the sale of Chapter 12 estate property could be treated as unsecured claims of the estate. The Bankruptcy Court in this case had rejected the holding of *In re Knudsen*, and held that the statute was clear that no separate taxable entity was created in Chapter 12 proceedings; therefore, post-petition sales of estate property were taxable to the debtor personally. The Bankruptcy Court also had held that the taxes were not entitled to the administrative expenses exception in Section 1222(a)(2)(A) because the taxes were not entitled to priority under Section 507. On the first appeal the District Court reversed, holding that, in accordance with *In re Knudsen*, *In re Dawes, 382 B.R. 509 (Bankr. D. Kan. 2008), aff'd, 415 B.R. 815 (D. Kan. 2009)*, and *In re Schilke, 379 B.R. 899 (Bankr. D. Neb. 2007), aff'd, 2008 U.S. Dist. LEXIS 68176 (D. Neb. 2008),* the legislative history and purpose of Section 1222(a)(2)(A) required that income taxes resulting from postpetition sales of a Chapter 12 debtor's property were administrative expenses entitled to application of Section 1222(a)(2)(A). On further appeal, the Ninth Circuit Court of Appeals reversed in a two to one decision, holding that, because there is no bankruptcy estate entity created in Chapter 12, the estate cannot be liable for an tax resulting from the postpetition sale of estate property. This decision creates a split of authority among the Ninth, Eighth and Tenth Circuits, see *In re Ficken, 2009 Bankr. LEXIS 3008 (Bankr. D. Colo. 2009)***, ***aff'd***, ***2010-1 U.S. Tax Cas. (CCH) ¶ 50,409 (Bankr. 10th Cir. 2010)*. See Harl, "Major Development in Income Taxation of Chapter 12 Bankruptcy Debtors," 20 *Agric. L. Dig*. 145 (2009). A future issue of the *Digest* will publish an article on this case by Dr. Neil Harl. ***In re* Hall, 2010-2 U.S. Tax Cas. (CCH) ¶ 50,566 (9th Cir. 2010), *rev'g*, 393 B.R. 857 (D. Ariz. 2008), *rev'g*, 376 B.R. 741 (Bankr. D. Ariz. 2007)**.

FEDERAL FARM PROGRAMS

FARMERS' MARKETS. The AMS has issued proposed regulations for the AMS Farmers' Market Promotion Program (FMPP). The FMPP is a competitive grant program that makes funds available to eligible entities for projects to establish, expand, and promote farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer marketing opportunities. The proposed rule would establish eligibility and application requirements, the review and approval process, and grant administration procedures for the FMPP. **76 Fed. Reg. 3046 (Jan. 19, 2011)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION-SKIPPING TRANSFERS. The taxpayers, husband and wife, created a trust in 2000 for their lineal descendants and made joint gifts to the trusts in subsequent years. The taxpayers hired an accountant to file Forms 709 for the gifts but the accountant failed to allocate one spouse's GST exemption to those returns. That spouse died and the estate sought an extension of time to make the allocation of GST exemption to the gifts. The IRS granted the extension. **Ltr. Rul. 201102053, Sept. 17, 2010**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued a revised revenue procedure for automatic consent of the IRS for certain changes in accounting methods. In most situations, a completed and filed current Form 3115, Application for Change in Accounting Method, will serve as the application for consent to change accounting methods. The procedures generally apply to applications to change accounting methods that are filed on or after January 10, 2011, for a year of change ending on or after April 30, 2010. *Rev. Proc. 2008-52, 2008-2 C.B. 587*, is superseded. Significant changes include (1) modifying the 120-day window period to provide if a taxpayer is within the 120-day window period, that 120-day window period ends when Appeals refers a case to the examining agent(s) for reconsideration; (2) clarifying that a taxpayer under examination, for purposes of this revenue procedure, continues to be under examination while the taxpayer has a refund or credit under review by the Joint Committee on Taxation; (3) modifying the rules for a taxpayer with a method of accounting for an item that is an issue under consideration before an appeals office when the appeals office submits a refund or credit to the Joint Committee on Taxation; (4) modifying the rules for a taxpayer with a method of accounting for an item that is an issue under consideration before a federal court when a settlement stipulation is submitted to the Joint Committee on Taxation; (5) clarifying that a taxpayer receives the consent of the Commissioner to make a change in method of accounting under the revenue procedure if the taxpayer complies with the provisions of this revenue procedure and implements the change on its federal income tax return for the requested year of change to which the original application is attached; (6) modifying the requirement that, in certain cases, a copy of the application be provided to the IRS in Ogden, UT, in lieu of providing the copy of the application to the national office; and (7) changes from impermissible to permissible methods of accounting for depreciation and amortization, clarifying that the amount of depreciation allowable takes into account all additional first year depreciation deduction provisions. **Rev. Proc. 2011-14, I.R.B. 2011-4**.

BUSINESS EXPENSES. The taxpayer was not allowed deduction for repairs and maintenance, legal and professional services, and other expenses for lack of substantiation. **Campbell v. Comm'r, T.C. Memo. 2011-15**.

The taxpayer claimed business deductions for automobile, meal and entertainment expenses. The taxpayer presented appointment books, spreadsheets and credit card statements to prove the business purpose of the expenses but most of the evidence was rejected because the entries failed to identify the business purpose or actual cost of each item. **Pace v. Comm'r, T.C. Memo. 2010-272**.

After being terminated from employment, the taxpayer sought to open a private law practice in 2005. The evidence demonstrated that the taxpayer's practice did not receive any income in 2005 and the court held that a trade or business did not yet exist in 2005; therefore, the expenses associated with the activity were non-deductible start-up expenses. **Forrest v. Comm'r, T.C. Memo. 2011-4**.

CASUALTY LOSSES. The taxpayer failed to file returns or pay taxes for three years. The IRS constructed substitute returns and made assessments. The taxpayer claimed at trial to be entitled to deductions for moving expenses and casualty losses in excess of income. Because the taxpayer failed to provide any substantive evidence to support the moving expenses or casualty loss, the court allowed only a portion of the claimed deductions. **Zilberberg v. Comm'r, T.C. Memo. 2011-5**.

CHARITABLE ORGANIZATIONS. The IRS has issued revised a revenue procedure which relieves I.R.C. § 501(c) organizations from the requirement of filing a Form 990 if the organization's annual gross receipts are not more than $50,000. Such organizations are required only to file a Form 990-N e-postcard. **Rev. Proc. 2011-15, 2011-1 C.B. 322**.

DEPRECIATION. The taxpayer worked in the film industry and acquired a collection of memorabilia on several actors, musicians and notable historical figures. The taxpayer claimed that the purpose of the collections was to produce a research library which would be used by other people doing research on the figures. The taxpayer claimed depreciation deductions on the collection, based on a 5-year recovery rate. The court held that the IRS properly disallowed the deductions because the taxpayer failed to prove that the collection had a definite economic life period or that the collection was trade or business property. **Rooney v. Comm'r, T.C. Memo. 2011-14**.

DISABILITY PAYMENTS. The taxpayer participated in a pension plan negotiated with the taxpayer's employer by the taxpayer's union. The plan provided disability retirement benefits based on the number of years of employment and on the taxpayer qualifying for social security disability payments. The taxpayer received several injuries in the course of employment and started receiving disability payments under the plan after qualifying for social security disability payments. The court held that the payments were included in taxable income because (1) the payments were not excludible under I.R.C. § 104(a)(1) since the plan was negotiated between non-governmental parties; (2) the payments were not excludible under I.R.C. § 104(a)(2) since no lawsuit was filed which gave rise to the payments and (3) the payments were not excludible under I.R.C. § 105(a) since the payments were not determined by the nature or extent of the injury but on the length of employment. **Zardo v. Comm'r, T.C. Memo. 2010-7**.

EDUCATION TAX CREDITS. The IRS has published information about the American Opportunity Credit and Lifetime Learning Credit. To qualify for either credit, taxpayers must pay postsecondary tuition and fees for themselves, a spouse or a dependent. The credit may be claimed by the parent or the student, but not by both. If the student was claimed as a dependent, the student cannot file for the credit. For each student, taxpayers can choose to claim only one of the credits in a single tax year. For example, a taxpayer cannot claim the American Opportunity Credit to pay for part of a daughter's tuition charges and then claim the Lifetime Learning Credit for $2,000 more of the daughter's school costs. However, if a taxpayer pays college expenses for two or more students in the same year, the taxpayer can choose to take credits on a per-student, per-year basis. For example, a taxpayer can claim the American Opportunity Credit for a sophomore daughter and the Lifetime Learning Credit for a senior son.

The American Opportunity Credit. The credit can be up to $2,500 per eligible student. It is available for the first four years of post-secondary education. Forty percent of the credit is refundable, which means that taxpayers may be able to receive up to $1,000, even if they owe no taxes. The student must be pursuing an undergraduate degree or other recognized educational credential. The student must be enrolled at least half time for at least one academic period. Qualified expenses include tuition and fees, coursed-related books supplies and equipment. The full credit is generally available to eligible taxpayers who make less than $80,000 or $160,000 for married couples filing a joint return.

Lifetime Learning Credit. The credit can be up to $2,000 per eligible student. It is available for all years of postsecondary education and for courses to acquire or improve job skills. The maximum credit is limited to the amount of tax on the return. The student does not need to be pursuing a degree or other recognized education credential. Qualified expenses include tuition and fees, course related books, supplies and equipment. The full credit is generally available to eligible taxpayers who make less than $60,000 or $120,000 for married couples filing a joint return. Taxpayers cannot claim the tuition and fees tax deduction in the same year that they claim the American Opportunity Tax Credit or the Lifetime Learning Credit. Taxpayers must choose to either take the credit or the deduction and should consider which is more beneficial. **IRS Tax Tip 2010-12**.

EMPLOYEE BENEFITS. The IRS has issued a revenue procedure which provides that: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2011 for which the vehicle cents-per-mile valuation rule provided under Treas. Reg. § 1.61-21(e) may be applicable is $15,300 for a passenger automobile and $16,200 for a truck or van; and (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2010 for which the fleet-average valuation rule provided under Treas. Reg. § 1.61-21(d) may be applicable is $20,300 for a passenger automobile and $21,200 for a truck or van. **Rev. Proc. 2011-11, 2011-1 C.B. 329**.

IRA. The taxpayer owned an IRA and had ordered a distribution from the IRA. The taxpayer provided medical evidence to show that the taxpayer suffered from a mental disability during the time when the distribution was made and that the taxpayer had no memory of requesting the distribution until a Form 1099-R was issued. The funds were not used during the period after the distribution and were transferred back to the IRA when the error was discovered. The taxpayer sought a waiver of the 60-day rollover period requirement. The IRS granted the waiver of the 60-day period based on the taxpayer's mental disability during the distribution period. **Ltr. Rul. 201101031, Oct. 13, 2010**.

INNOCENT SPOUSE RELIEF. The taxpayer and spouse had filed 2000 and 2002 income tax returns without payment of the taxes owed. The spouse subsequently died and the taxpayer sought innocent spouse relief from the taxes for those years, claiming that the taxpayer had thought that the spouse had made the payments from refunds. The court held that the taxpayer was not entitled to innocent spouse relief because the taxpayer did not meet the safe harbor condition of lack of knowledge that the taxes were not paid in that the taxpayer had knowledge that the couple was in financial distress at the time. The court held that the taxpayer met the condition of not being married from the fact that the spouse had died. In addition, the court held that the taxpayer was not eligible for equitable innocent spouse relief because (1) the taxpayer failed to demonstrate that payment of the taxes would be a financial hardship, (2) the taxpayer had reason to know that the taxes were not paid, and (3) the taxpayer did not fully comply with income tax laws in subsequent tax years. The court found the other factors of *Rev. Proc. 2003-61, 2003-2 C.B. 298* as neutral; therefore, the balance of the factors weighed against equitable innocent spouse relief. **Bland v. Comm'r, T.C. Memo. 2011-8**.

The taxpayer filed for equitable innocent spouse relief, under I.R.C. § 6015(f), from joint tax liabilities created by the taxpayer's spouse's criminal activity. The IRS denied relief under Treas. Reg. § 1.6015-5(b)(1) because the relief was requested more than two years after collection efforts had begun. Although I.R.C. § 6015(b) and (c) have a two-year limitation period, the court held that the absence of a two year limitation period in I.R.C. § 6015(f) indicated Congress' intent to allow equitable relief requests to be made for a longer, if not unlimited, period. Therefore, the court held that the two year period of limitations in Treas. Reg. § 1.6015-5(b)(1) was invalid as to requests for equitable relief under I.R.C. § 6015(f). On appeal the appellate court reversed, holding that the regulation was a reasonable interpretation of the statute. The case was remanded to determine whether the limitation period was tolled by any circumstances. **Mannella v. Comm'r, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,159 (3d Cir. 2011),** ***rev'g and rem'g*****, 132 T.C. 196 (2009)**.

The taxpayer was divorced and filed for equitable innocent spouse relief from taxes owed from years in which the taxpayer and former spouse filed joint tax returns but did not timely pay the taxes. The court held that the taxpayer was entitled to innocent spouse relief because (1) the taxpayer was divorced, (2) the taxpayer would suffer economic hardship because the taxpayer was currently unemployed and had significant other debts, (3) the former spouse so controlled the finances of the couple that the taxpayer had no knowledge that the taxes would not be timely paid, (4) the former spouse was obligated under the divorce decree to pay the taxes, (5) the taxpayer did not receive substantial benefits from the failure to pay the taxes other than normal spousal support, (6) the taxpayer has complied with the tax laws since the divorce, and (7) the taxpayer was subject to physical and mental abuse during the marriage. **Stephenson v. Comm'r, T.C. Memo. 2011-16**.

INVESTMENT INCOME. The taxpayer had investment interest expense and net capital gains from the disposition of property held for investment during a tax year. The taxpayer hired an accountant to file the income tax return which was timely filed. However, the accountant did not elect on Form 4952, Investment Interest Expense Deduction, to include any part of taxpayer's net capital gain as investment income on the return. The accountant did not advise taxpayer to make the election under I.R.C. § 163(d)(4)(B) at that time. The error was discovered and an amended return was filed with the election; however, the accountant failed to realize that the election could not be made on an amended return. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201102031, Sept. 30, 2010**.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company which elected to be treated as a partnership for federal tax purposes. One of the partners died during a tax year but the partnership failed to make the election under I.R.C. § 754 to adjust the partnership basis in partnership property on its return for that year. The IRS granted an extension of time to file the election. **Ltr. Rul. 201102025, Sept. 8, 2010; Ltr. Rul. 201102026, Sept. 8, 2010**.

PENSION PLANS. For plans beginning in January 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 4.26 percent, the corporate bond weighted average is 6.12 percent, and the 90 percent to 100 percent permissible range is 5.51 percent to 6.12 percent. **Notice 2011-7, I.R.B. 2011-5**.

RETURNS. The IRS has published information about determining the proper filing status. A taxpayer's filing status is used to determine the taxpayer's filing requirements, standard deduction, eligibility for certain credits and deductions, and correct tax. There are five filing statuses: Single, Married Filing Jointly, Married Filing Separately, Head of Household and Qualifying Widow(er) with Dependent Child. (1) A taxpayer's marital status on the last day of the year determines the marital status for the entire year. (2) If more than one filing status applies, the taxpayer should choose the one that gives the lowest tax obligation. (3) Single filing status generally applies to anyone who is unmarried, divorced or legally separated according to state law. (4) A married couple may file a joint return together. The couple's filing status would be Married Filing Jointly. (5) If a spouse died during the year and the taxpayer did not remarry during 2010, usually the taxpayer may still file a joint return with that spouse for the year of death. (6) A married couple may elect to file their returns separately. Each person's filing status would generally be Married Filing Separately. (7) Head of Household generally applies to taxpayers who are unmarried. The taxpayer must also have paid more than half the cost of maintaining a home for the taxpayer and a qualifying person to qualify for this filing status. (8) The taxpayer may be able to choose Qualifying Widow(er) with Dependent Child as the filing status if the taxpayer's spouse died during 2008 or 2009, the taxpayer has a dependent child and the taxpayer meets certain other conditions. See IRS Publication 501, Exemptions, Standard Deduction, and Filing Information. Publication 501. Taxpayers can also use the Interactive Tax Assistant on the IRS website to determine the proper filing status. **IRS Tax Tip 2011-09**.

The IRS has published information about obtaining prior years' tax returns. (1) There are three options for obtaining free copies of a federal tax return information – on the web, by phone or by mail. (2) The IRS does not charge a fee for transcripts, which are presently available for the current tax year as well as the past three tax years. (3) A tax return transcript shows most line items from the tax return as it was originally filed, including any accompanying forms and schedules. It does not reflect any changes made after the return was filed. (4) A tax account transcript shows any later adjustments either the taxpayer or the IRS made after the tax return was filed. This transcript shows basic data – including marital status, type of return filed, adjusted gross income and taxable income. (5) To request either transcript online, go to http://www.irs.gov and look for the IRS new online tool called Order A Transcript. To order by phone, call 800-908-9946 and follow the prompts in the recorded message. (6) To request a 1040, 1040A or 1040EZ tax return transcript through the mail, complete IRS Form 4506T-EZ, Short Form Request for Individual Tax Return Transcript. Businesses, partnerships and individuals who need transcript information from other forms or need a tax account transcript must use the Form 4506T, Request for Transcript of Tax Return. (7) If a taxpayer orders online or by phone, the taxpayer should receive the tax return transcript within 5 to 10 days from the time the IRS receives the request. Allow 30 calendar days for delivery of a tax account transcript if the taxpayer orders by mail using Form 4506T or Form 4506T-EZ. (8) If the taxpayer still needs an actual copy of a previously processed tax return, it will cost $57 for each tax year ordered. Complete Form 4506, Request for Copy of Tax Return, and mail it to the IRS address listed on the form for the taxpayer's area. Copies are generally available for the current year as well as the past six years. Please allow

60 days for actual copies of the return. (9) Visit http://www.irs.gov to determine which form will meet your needs. Forms 4506, 4506T and 4506T-EZ can be found at http://www.irs.gov or by calling the IRS forms and publications order line at 800-TAX-FORM (800-829-3676). **IRS Tax Tip 2011-13**.

The IRS has announced that, beginning Feb. 14, 2011, the IRS will start processing both paper and e-filed returns claiming itemized deductions on Schedule A, the higher education tuition and fees deduction on Form 8917 and the educator expenses deduction. **IR-2011-7**.

SAFE HARBOR INTEREST RATES
February 2011

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.51	0.51	0.51	0.51
110 percent AFR	0.56	0.56	0.56	0.56
120 percent AFR	0.61	0.61	0.61	0.61
		Mid-term		
AFR	2.33	2.32	2.31	2.31
110 percent AFR	2.57	2.55	2.54	2.54
120 percent AFR	2.80	2.78	2.77	2.76
		Long-term		
AFR	4.15	4.11	4.09	4.08
110 percent AFR	4.57	4.52	4.49	4.48
120 percent AFR	4.99	4.93	4.90	4.88

Rev. Rul. 2011-4, I.R.B. 2011-6.

TIP INCOME. The IRS has published guidance on reporting of tip income. Tips are taxable. (1) Tips are subject to federal income, Social Security and Medicare taxes. The value of non–cash tips, such as tickets, passes or other items of value, is also income and subject to tax. (2) Taxpayers must include in gross income all cash tips received directly from customers, tips added to credit cards, and the taxpayer's share of any tips received under a tip–splitting arrangement with fellow employees. (3) If a taxpayer receives $20 or more in tips in any one month, the taxpayer should report all of the tips to the employer. The taxpayer's employer is required to withhold federal income, Social Security and Medicare taxes. (4) Taxpayers can use IRS Publication 1244, Employee's Daily Record of Tips and Report to Employer, to record tip income. **IRS Tax Tip 2011-14**.

TAX COURT. The taxpayer received a deficiency notice from the IRS at the taxpayer's address in Canada. The notice listed June 14, 2010 as the last date to file a Tax Court petition as to the deficiency. The taxpayer's petition arrived at the Tax Court on June 17, 2010 and the court issued a show cause order for dismissal for lack of jurisdiction because of the late petition. The taxpayer had mailed the petition in Canada on June 9, 2010 by registered mail. The envelope reached the USPS International Service Center in California on June 11, 2010. No USPS postmark was added but the USPS had tracking data on the envelope. The tracking data showed the arrival date in California and delivery date with the court. The IRS argued that the absence of a USPS postmark means that no extrinsic evidence could be used to show timely delivery. The court held that the Canadian registered mail service and USPS tracking service provided sufficient evidence of the timely mailing of the petition within the United State to allow application of I.R.C. § 7502(a) to deem the petition as timely filed. **Boultbee v. Comm'r, T.C. Memo. 2011-11**.

WITHHOLDING TAXES. The taxpayers were nonprofit corporations which offered graduate medical education programs for medical residents and fellows. The residents were enrolled in courses, performed research and participated in teaching rounds, receiving grades, evaluations and certification at the end of the program. The residents performed medical services for more than 40 hours per week and received stipends to help offset the cost of enrollment. The taxpayers did not withhold or pay FICA taxes on the stipends, arguing that the stipends were exempt under I.R.C. § 3121(b)(10) as amounts paid to students. The IRS issued regulations which restricted the I.R.C. § 3121(b)(10) exemption to organizations with a primary purpose of education and for part-time employment only. The trial court held that the regulations were invalid as improperly restricting the exemption beyond the statute. The appellate court reversed, holding the regulations consistent with other FICA exceptions which focused on part-time employment. The U.S. Supreme Court affirmed, holding that the IRS regulations were a reasonable interpretation of the tax code provisions. **Mayo Foundation for Medical Education and Research v. United States, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,143 (S. Ct. 2011), *aff'g*, 2009-1 U.S. Tax Cas. (CCH) ¶ 50,432 (8th Cir. 2009), *rev'g*, 2007-2 U.S. Tax Cas. (CCH) ¶ 50,577 (D. Minn. 2007)**.

STATE TAXATION

AGRICULTURAL USE. The plaintiffs owned 320 acres used to graze cattle in an area zoned for exclusive farm use (EFU). As EFU property the value for property tax purposes was determined under Or. Rev. Stat. § 308A.062. The property included a portion of a small mountain and 1.34 acres on top of the mountain included several telecommunication towers and buildings leased to third parties. The cattle grazed around these properties. The plaintiffs were successful in two appeals of the county's change in assessment to disqualify the 1.34 acres as EFU land. After the EFU regulations were changed, the county again disqualified the 1.34 acres from the EFU valuation and the plaintiffs appealed. The plaintiffs argued that issue preclusion should prevent the county from attempting to again change the EFU status of the 1.34 acres. The court held that each tax year created a separate action on the tax valuation of property; therefore issue preclusion did not apply to prohibit the change in EFU qualification, especially after the change in the zoning regulations. **Safley v. Jackson County Assessor, 2010 Or. Tax LEXIS 324 (Or. Tax Ct. 2010)**.

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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

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