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Cases, Regulations and Statutes

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nothing, moreover, that ties that authority to Section 754 elections. The statutory language in Section 743 is fairly clear in referring to the "... transfer of an interest in a partnership by sale or exchange. . . ."[13] Thus, it does not appear that a triggering of gain from debt in excess of basis[14] provides authority to use that as an occasion to invoke basis adjustment in a partnership. As the Seventh Circuit Court of Appeals stated in a 1980 decision,[15] the "... proper inquiry is whether a given transaction is properly characterized as a gift or a taxable disposition." It is doubtful that the use of the term "sale" by the Tax Court has broadened the meaning of adjustments to basis triggered by debt in excess of basis as a "deemed" sale.

Results of the election

If the election is made, it applies to give the partner involved a "special basis" for each property for purposes of figuring gain or loss on sale and for purposes of depreciation or both.[16] A partnership with a Section 754 election in effect -- (1) increases the adjusted basis of partnership property by the excess of the transferor's basis for the transferred partnership interest over the transferee's share of the adjusted basis to the partnership of the partnership's property, or (2) decreases the adjusted basis of partnership property by the excess of the transferee's share of the adjusted basis to the partnership of the partnership's property over the transferee's basis for the transferred partnership interest.[17]

The allocations of basis adjustments among partnership assets are made on the basis of the amounts of income, gain or loss that the transferee would be allocated if, immediately after the transfer, all of the partnership assets were disposed of in a fully taxable, hypothetical sale for fair market value.[18]

If a later installment sale of assets is implemented, and a loss results to the electing partner because of the basis increase, the partnership can report a gain and the electing partner can report a loss.[19]

The opportunity to make the election for a partnership in which one of the partners has died expires when the next tax return of the partnership is filed.[20] However, extensions may be granted for good cause for partnerships, LLCs and other entities that are characterized as partnerships for federal income tax purposes.[21] Extension requests may be denied if the request was not made promptly.[22]

ENDNOTES

1 I.R.C. § 754. See 8 Harl, *Agricultural Law* § 60.04[4][b][i] (2013); Harl, *Agricultural Law Manual* §7.03[2][b][iii] (2013); 2 Harl, *Farm Income Tax Manual* § 6.07[3], [4] (2013 ed.).

2 I.R.C. § 1001(a).

3 I.R.C. § 1014(a).

4 See., e.g., Ltr. Rul. 201135021, May 17, 2011 (LLC granted extension to make § 754 election); Ltr. Rul. 200626003, February 28, 2006 (LLC denied request for extension to make Sec 754 election).

5 I.R.C. § 754.

6 I.R.C. § 754.

7 I.R.C. § 743(a).

8 I.R.C. § 734(d)(1).

9 See, e.g., Johnson v. Comm'r, 59 T.C. 791(1973), *aff'd*, 495 F.2d 1079 (6th Cir. 1974), *cert. denied*, 419 U.S. 1040 (1974) (indebtedness in excess of basis).

10 See Treas. Reg. § 1.1001-2(a), (b), Ex. 6.

11 59 T.C. 791 (1973).

12 495 F.2d 1079 (6th Cir. 1974), *cert. denied*, 419 U.S. 1040 (1974). See also Levine v. Comm'r, 72 T.C. 780 (1979), *aff'd*, 634 F.2d 12 (2d Cir. 1980); Evangelista v. Comm'r, 71 T.C. 1057 (1979), *aff'd*, 629 F.2d 1218 (7th Cir. 1980).

13 I.R.C. § 743(a).

14 See Treas. Reg. § 1.1001-2(a).

15 Evangelista v. Comm'r, 629 F.2d 1218 (7th Cir. 1980).

16 See Treas. Reg. § 1.743-1(a).

17 Treas. Reg. § 1.743-1(b).

18 I.R.C. § 743(b).

19 Rev. Rul. 79-72, 1979-1 C.B. 278.

20 Treas. Reg. § 1.754-1(b).

21 E.g., Ltr. Rul. 201251004, Sept. 14, 2012 (extension granted).

22 E.g., Ltr. Rul. 201102025, Sept. 8, 2010 (election denied; requirements not satisfied).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the trustee for the decedent's estate retained tax professionals for advice on estate tax matters including the necessity to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The trustee of the decedent's estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by section 1022 to eligible property transferred as a result of the decedent's death. The IRS granted the extension. **Ltr. Rul. 201306011, Sept. 24, 2012**.

GIFTS. The decedent had transferred income interests in a limited liability company to two trusts in exchange for 10-year promissory notes. The IRS assessed gift tax on the transactions and the estate appealed, arguing that the transactions were made in the ordinary course of business. The taxpayer sought summary judgment; however, the value of the LLC interests and the promissory notes was in dispute and neither party had provided sufficient evidence to support summary judgment. In addition, the taxpayer had not provided sufficient evidence to prove that the transfers were made in the ordinary course of business. Thus, with both issues remaining disputed as to material facts, the court held that summary judgment was improper. **Estate of Brown v. Comm'r, T.C. Memo. 2013-50**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The IRS has published information about the alternative minimum tax (AMT). Taxpayers may have to pay the tax if their taxable income plus certain adjustments is more than the AMT exemption amount for the taxpayer's filing status. The 2012 AMT exemption amounts for each filing status are: Single and Head of Household = $50,600; Married Filing Joint and Qualifying Widow(er) = $78,750; and Married Filing Separately = $39,375. AMT attempts to ensure that some individuals and corporations who claim certain exclusions, tax deductions and tax credits pay a minimum amount of tax. Taxpayers should use IRS e-file to prepare and file a tax return. Taxpayers figure AMT using different rules than those used to figure regular income tax. IRS e-file software will determine if a taxpayer owes AMT, and will figure the tax for the taxpayer. If a taxpayer files a paper return, the taxpayer should use the AMT Assistant tool on IRS.gov to find out if the taxpayer may need to pay the tax. Taxpayer should check Form 6251, *Alternative Minimum Tax – Individuals* and its instructions. **IRS Tax Tip 2013-17**.

CHILD TAX CREDIT. The IRS has published information about the Child Tax Credit. If a taxpayer has a child under age 17, the Child Tax Credit may save money at tax-time. *Amount of credit*. The non-refundable Child Tax Credit may help reduce federal income tax by up to $1,000 for each qualifying child taxpayer claims on a return. *Qualifications*. For this credit, a qualifying child must pass seven tests: (1) *Age test*. The child must have been under age 17 at the end of 2012. (2) *Relationship test*. The child must be the taxpayer's son, daughter, stepchild, foster child, brother, sister, stepbrother, or stepsister. A child may also be a descendant of any of these individuals, including the taxpayer's grandchild, niece or nephew. Taxpayers should always treat an adopted child as the taxpayer's own child. An adopted child includes a child lawfully placed with the taxpayer for legal adoption. (3) *Support test*. The child must not have provided more than half of their own support for the year. (4) *Dependent test*. The taxpayer must claim the child as a dependent on a federal tax return. (5) *Joint return test*. The child cannot file a joint return for the year, unless the only reason they are filing is to claim a refund. (6) *Citizenship test*. The child must be a U.S. citizen, U.S. national or U.S. resident alien. (7) *Residence test*. In most cases, the child must have lived with the taxpayer for more than half of 2012. *Limitations*. The Child Tax Credit is subject to income limitations, and may be reduced or eliminated depending on the taxpayer's filing status and income. *Additional Child Tax Credit*. If the taxpayer qualifies and gets less than the full Child Tax Credit, the taxpayer could receive a refund even if the taxpayer owes no tax with the refundable Additional Child Tax Credit. *Form 8812*. If the taxpayer qualifies to claim the Child Tax Credit, taxpayers should make sure to check whether the taxpayer must complete and attach the new Form 8812, *Child Tax Credit*, with the return. If the taxpayer qualifies to claim the Additional Child Tax Credit, the taxpayer must complete and attach Schedule 8812. See IRS Publication 972, *Child Tax Credit*, for more details. **IRS Tax Tip 2013-18**.

CORPORATIONS

LEGAL FEES. The taxpayer was a corporation which was owned by another wholly-owned family corporation which also owned a third corporation. All three corporations were part of a cement business. The taxpayer's board of directors decided to purchase the other two corporations. One shareholder of the taxpayer challenged the reorganization in a law suit. The parties negotiated a settlement. The taxpayer deducted the legal fees incurred in the litigation and settlement. The court held that the legal fees were capital expenses because the fees arose out of the reorganization. **Ash Grove Cement Co. v. Comm'r, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,180 (D. Kan. 2013)**.

DISCHARGE OF INDEBTEDNESS. The taxpayers owned several companies and joined a local union to take advantage of life insurance obtained through the union. The taxpayer borrowed against the policies and signed promissory notes for repayment, although only one payment was ever made. The loan agreement provided that repayment could be made by offset against the policy benefits and the benefits always exceeded the loan amounts. The court held that no discharge of indebtedness income had been realized because, although the loans were not paid under their terms, the excess of policy benefits meant that the loans were not in default. The failure to repay the loan from a welfare benefits fund was collateralized by the death benefits. **Pinn v. Comm'r, T.C. Memo. 2013-45**.

EDUCATION CREDITS. Although a taxpayer often qualifies for more than one of these benefits, he or she can only claim one of them for a particular student in a particular year. The benefits are available to all taxpayers – both those who itemize their deductions on Schedule A and those who claim a standard deduction. The credits are claimed on Form 8863 and the tuition and fees deduction is claimed on Form 8917.

American Opportunity Credit. The American Taxpayer Relief Act, enacted Jan. 2, 2013, extended the American Opportunity Tax Credit for another five years until the end of 2017. The new law also retroactively extended the tuition and fees deduction, which had expired at the end of 2011, through 2013. The lifetime learning credit did not need to be extended because it was already a permanent part of the tax code. For those eligible, including most undergraduate students, the American Opportunity Tax Credit will yield the greatest tax savings. Alternatively, the lifetime learning credit should be considered by part-time students and those attending graduate school. For others, especially those who don't qualify for either credit, the tuition and fees deduction may be the right choice. All three benefits are available for students enrolled in an eligible college, university or vocational school, including both nonprofit and for-profit institutions. None of them can be claimed by a nonresident alien or married person filing a separate return. In most cases, dependents cannot claim these education benefits. Normally, a student will receive a Form 1098-T from their institution by the end of January of the following year. This form will show information about tuition paid or billed along with other information. However, amounts shown on this form may differ from amounts taxpayers are eligible to claim for these tax benefits. Many of those eligible for the American Opportunity Tax Credit qualify for the maximum annual credit of $2,500 per student. Here are some key features of the credit: (1) The credit targets the first four years of post-secondary education, and a student must be enrolled at least half time. This means that expenses paid for a student who, as of the beginning of the tax year, has already completed the first four years of college does not qualify. Any student with a felony drug conviction also does not qualify. (2) Tuition, required enrollment fees, books and other required course materials generally qualify. Other expenses, such as room and board, do not. (3) The credit equals 100 percent of the first $2,000 spent and 25 percent of the next $2,000. That means the full $2,500 credit may be available to a taxpayer who pays $4,000 or more in qualified expenses for an eligible student. (4) The full credit can only be claimed by taxpayers whose modified adjusted gross income (MAGI) is $80,000 or less. For married couples filing a joint return, the limit is $160,000. The credit is phased out for taxpayers with incomes above these levels. No credit can be claimed by joint filers whose MAGI is $180,000 or more and singles, heads of household and some widows and widowers whose MAGI is $90,000 or more. (5) Forty percent of the American Opportunity Tax Credit is refundable. This means that even people who owe no tax can get an annual payment of up to $1,000 for each eligible student. Other education-related credits and deductions do not provide a benefit to people who owe no tax.

Lifetime Learning Credit. The lifetime learning credit of up to $2,000 per tax return is available for both graduate and undergraduate students. Unlike the American Opportunity Tax Credit, the limit on the lifetime learning credit applies to each tax return, rather than to each student. Though the half-time student requirement does not apply, the course of study must be either part of a post-secondary degree program or taken by the student to maintain or improve job skills. Other features of the credit include: (1) tuition and fees required for enrollment or attendance qualify as do other fees required for the course; however, additional expenses do not; (2) the credit equals 20 percent of the amount spent on eligible expenses across all students on the return; therefore, the full $2,000 credit is only available to a taxpayer who pays $10,000 or more in qualifying tuition and fees and has sufficient tax liability; (3) income limits are lower than under the American Opportunity Tax Credit. For 2012, the full credit can be claimed by taxpayers whose MAGI is $52,000 or less. For married couples filing a joint return, the limit is $104,000. The credit is phased out for taxpayers with incomes above these levels. No credit can be claimed by joint filers whose MAGI is $124,000 or more and singles, heads of household and some widows and widowers whose MAGI is $62,000 or more.

Like the lifetime learning credit, the tuition and fees deduction is available for all levels of post-secondary education, and the cost of one or more courses can qualify. The annual deduction limit is $4,000 for joint filers whose MAGI is $130,000 or less and other taxpayers whose MAGI is $65,000 or less. The deduction limit drops to $2,000 for couples whose MAGI exceeds $130,000 but is no more than $160,000, and other taxpayers whose MAGI exceeds $65,000 but is no more than $80,000. Eligible parents and students can get the benefit of these provisions during the year by having less tax taken out of their paychecks. They can do this by filling out a new Form W-4, claiming additional withholding allowances, and giving it to their employer.

There are a variety of other education-related tax benefits that can help many taxpayers. They include: (1) scholarship and fellowship grants—generally tax-free if used to pay for tuition, required enrollment fees, books and other course materials, but taxable if used for room, board, research, travel or other expenses; (2) student loan interest deduction of up to $2,500 per year; (3) savings bonds used to pay for college—though income limits apply, interest is usually tax-free if bonds were purchased after 1989 by a taxpayer who, at time of purchase, was at least 24 years old; and (4) qualified tuition programs, also called 529 plans, used by many families to prepay or save for a child's college education. Taxpayers with qualifying children who are students up to age 24 may be able to claim a dependent exemption and the earned income tax credit. The general comparison table in Publication 970, *Tax Benefits for Education*, can be a useful guide to taxpayers in determining eligibility for these benefits. **IR-2013-22**.

FILING STATUS. The IRS has published information about choosing the correct filing status. (1) *Marital Status*. A taxpayer's marital status on the last day of the year is the taxpayer's marital status for the entire year. (2) *If the Taxpayer has a Choice*. If more than one filing status fits the taxpayer, the taxpayer should choose the one that allows the taxpayer to pay the lowest taxes. (3) *Single Filing Status*. Single filing status generally applies if the taxpayer is not married, divorced or legally separated according to state law. (4) *Married Filing Jointly*. A married couple may file a return together using the Married Filing Jointly status. If the taxpayer's spouse died during 2012, the taxpayer usually may still file a joint return for that year. (5) *Married Filing Separately*. If a married couple decides to file their returns separately, each person's filing status would generally be Married Filing Separately. (6) *Head of Household*. The Head of Household status generally applies if the taxpayer is not married and has paid more than half the cost of maintaining a home for the taxpayer and a qualifying person. (7) *Qualifying Widow(er) with Dependent Child*. This status may apply if the taxpayer's spouse died during 2010 or 2011, the taxpayer has a dependent child and the taxpayer meets certain other conditions. More helpful information can be found in IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information*. **IRS Tax Tip 2013-13**.

FOREIGN ACCOUNTS. The taxpayers were served subpoenas *duces tecum* to file Forms TD F 90-22.1, *Reports of Foreign Bank and Financial Accounts* ("FBAR") which the taxpayers resisted as a violation of their Fifth Amendment right against self-incrimination. The IRS argued that the required records exception applied. The court held that the information gathering and records system of the Bank Secrecy Act of 1970 (BSA), 31 U.S.C. § 5311 created a civil record system which was customarily shared with other government agencies; therefore, the required records exception allowed the IRS to compel the taxpayers to provide Form TD F 90-22.1. ***In re* Grand Jury Proceedings, No. 4-10, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,182 (11th Cir. 2013)**.

FIRST TIME HOMEBUYER CREDIT. The taxpayer purchased a residence from the taxpayer's parent and claimed the first time homebuyer credit for the purchase. The taxpayer argued that the credit should not be disallowed for purchases from a relative if the buyer pays the full fair market value for the residence. The court held that the statute, I.R.C. § 36(c)(3)(A)(i) was unambiguous that any purchase from a parent was not eligible for the credit. **Fite v. Comm'r, T.C. Summary Op. 2013-12**.

HOBBY LOSSES. The taxpayers husband and wife, invested in a horse breeding scheme company under which they purchased mare leases for breedings to stallions. Although the resulting foals belonged to the taxpayers, the taxpayers had no involvement in the breeding, raising or training of the horses. Most of the horse activity was provided by the company. The taxpayers received substantial net operating losses from the activity which were used to offset current taxable income as well as taxable income from prior tax years. The court held that the taxpayers did not enter into the horse breeding activity with an intent to make a profit because (1) they did not keep adequate financial records and did consult impartial advisors, (2) they did not rely on expert advice and the taxpayer had no expertise in horse breeding; (3) the taxpayers had no good faith expectation of receiving a profit from the activity and expected only losses to be used for tax offsets; (4) no profits were ever received or expected from the activity, and (5) the taxpayer participated in the activity only for the tax benefits expected. **Pederson v. Comm'r, T.C. Memo. 2013-54; Romanowski v. Comm'r, T.C. Memo. 2013-55**.

IRA. The IRS has published a reminder that taxpayers who converted amounts to a Roth IRA or designated Roth account in 2010, in most cases, must report half of the resulting taxable income on their 2012 returns. Normally, Roth conversions are taxable in the year the conversion occurs. For example, the taxable amount from a 2012 conversion must be included in full on a 2012 return. But under a special rule that applied only to 2010 conversions, taxpayers generally include half the taxable amount in their income for 2011 and half for 2012, unless they chose to include all of it in income on their 2010 return. Roth conversions in 2010 from traditional IRAs are shown on 2012 Form 1040, Line 15b, or Form 1040A, Line 11b. Conversions from workplace retirement plans, including in-plan rollovers to designated Roth accounts, are reported on Form 1040, Line 16b, or Form 1040A, Line 12b. Taxpayers who also received Roth distributions in either 2010 or 2011 may be able to report a smaller taxable amount for 2012. For details, see the discussion under 2012 Reporting of 2010 Roth Rollovers and Conversions on IRS.gov. In addition, worksheets and examples can be found in Publication 590 for Roth IRA conversions and Publication 575 for conversions to designated Roth accounts. Taxpayers who made Roth conversions in 2012 or are planning to do so in 2013 or later years must file Form 8606 to report the conversion. As in 2010 and 2011, income limits no longer apply to Roth IRA conversions. **IR-2013-21**.

LIFE INSURANCE. The taxpayer purchased a life insurance policy on the taxpayer's life. The taxpayer chose the automatic premium payment provision which automatically borrowed premiums from the cash value of the policy if the premiums were not otherwise paid. The policy provided that the policy would terminate if the loan amount exceeded the cash value. In March 2009, the policy was terminated under these provisions and when the loan balance was $87,347. The insurance company sent the taxpayer a Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc*. for 2009 which listed the loan balance as a gross distribution of $86,762 and a taxable distribution of $37,981. The taxpayer did not include the $37,981 in taxable income and the IRS assessed a deficiency. The court held that the constructive distribution in satisfaction of the loans had the effect of a *pro tanto* payment of the policy proceeds to the taxpayer and constituted income to the taxpayer at that time to the extent it exceeded the investment in the policy. **Jarvis v. Comm'r, T.C. Summary Op. 2013-11**.

MORTGAGE INTEREST. The taxpayer owned two homes, each of which was a qualified residence. The combined acquisition indebtedness for the two properties exceeded $1 million, the acquisition indebtedness limitation. The mortgage on one home included a provision that, if the taxpayer was not required to pay all interest on the mortgage, the unpaid interest was added to the principal of the loan. The taxpayer argued that the unpaid, capitalized interest was also qualified residence interest. The court held, in keeping with a long established rule, that the unpaid, capitalized interest was not paid qualified residence interest and not deductible. Thus, the court held that, to the extent the qualified residence interest, excluding the unpaid, capitalized interest, exceeded $1 million, the interest deduction was properly disallowed because the mortgage interest deduction was subject to the acquisition indebtedness limitation. **Smoker v. Comm'r, T.C. Memo. 2013-56**.

The taxpayer filed a tax return for 2007 using the married filing separately status. The taxpayer claimed qualified residential mortgage interest as a deduction, but in an amount over the limit for the filing status. The IRS assessed a deficiency based on the excessive interest deduction claimed. The taxpayer filed a petition with the Tax Court challenging the assessment. The Taxpayer also sought permission to file an amended return using the married filing jointly status. The court noted that I.R.C. § 6013(b)(2)(B) precludes the filing of a joint return after a taxpayer files a separate return if the taxpayer files a timely petition with the Tax Court in respect of a notice of deficiency for the year for which the notice was issued. Therefore, the taxpayer could not file an amended return under the new status and could claim only the amount of mortgage interest allowed for taxpayers who were married and filing separately. **Zdunek v. Comm'r, T.C. Summary Op. 2013-13**.

PREPRODUCTIVE PERIOD EXPENSES. Under I.R.C. § 263A(d)(1) and Treas. Reg. § 1.263A-4(a)(2), taxpayers that are not required to use an accrual method by I.R.C. § 447 and are not tax shelters prohibited from using the cash receipts and disbursements method of accounting by I.R.C. § 448(a)(3) ("qualified taxpayers") are not required to capitalize (1) the costs of producing animals in a farming business, or (2) the costs of producing plants with a preproductive period of 2 years or less. In addition, under I.R.C. § 263A(d)(3) and Treas. Reg. § 1.263A-4(d), a qualified taxpayer may elect to have I.R.C. § 263A not apply to the costs of producing plants in a farming business (other than citrus or almond trees). Thus, unless an election is made to have I.R.C. § 263A not apply in accordance with I.R.C. § 263A(d)(3), qualified taxpayers generally are required to capitalize the costs of producing plants that have a preproductive period in excess of 2 years. In *Notice 2000-45, 2000-2 C.B. 256*, the Service and the Treasury Department published a nonexclusive list of plants having a nationwide weighted average preproductive period in excess of 2 years. Based upon information provided by the Department of Agriculture, the Service and the Treasury Department have decided to remove raspberry, blackberry, and papaya plants from its previously published list of plants having a preproductive period in excess of 2 years. In addition, the Service and the Treasury Department have listed the plants producing crops or yields which continue to have a nationwide weighted average preproductive period in excess of 2 years. **Notice 2013-18, I.R.B. 2013-14**.

The IRS has issued A modification of *Revenue Procedure 2011-14, 2011-1 C.B. 330*, to provide procedures for a taxpayer to obtain the automatic consent of the Commissioner under I.R.C. § 446(e) to change its method of accounting under I.R.C. § 263A for the production of one or more plants removed from the list of plants grown in commercial quantities in the United States having a preproductive period in excess of two years based on the nationwide weighted average preproductive period for such plants. **Rev. Proc. 2013-20, I.R.B. 2013-14**.

RETURNS. The IRS has announced that. starting Sunday, Feb. 10, the IRS will start processing tax returns that contain Form 4562, *Depreciation and Amortization*, and on Thursday, Feb. 14, the IRS plans to start processing Form 8863, *Education Credits*. This step clears the way for almost all taxpayers to start filing their tax returns for 2012. Form 8863 is used to claim two higher education credits -- the American Opportunity Tax Credit and the Lifetime Learning Credit. These forms affected the largest groups of taxpayers who were not able to file following the Jan. 30 opening of the 2013 tax season. The IRS will be able to accept the education credits and depreciation forms following the completion of reprogramming and testing of its systems. Work continues on preparing IRS systems to accept the remaining tax forms affected by the American Taxpayer Relief Act enacted by Congress on Jan. 2. The IRS also announced it will start accepting the remaining forms affected by the January legislation the first week of March. A specific date will be announced later. Most of those in this group file more complex tax returns and typically file closer to the deadline or obtain an extension. A full list of the forms that will be accepted the first week of March is available on IRS.gov. **IR-2013-18**.

SAFE HARBOR INTEREST RATES

March 2013

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.22	0.22	0.22	0.22
110 percent AFR	0.24	0.24	0.24	0.24
120 percent AFR	0.26	0.26	0.26	0.26
		Mid-term		
AFR	1.09	1.09	1.09	1.09
110 percent AFR	1.20	1.20	1.20	1.20
120 percent AFR	1.31	1.31	1.31	1.31
		Long-term		
AFR	2.66	2.64	2.63	2.63
110 percent AFR	2.92	2.90	2.89	2.88
120 percent AFR	3.20	3.17	3.16	3.15

Rev. Rul. 2013-7, I.R.B. 2013-11, *as revised Feb. 21, 2013*.

S CORPORATIONS

SECOND CLASS OF STOCK. The taxpayer was a corporation which and had made an election to be treated as an S corporation. The taxpayer and its shareholders intend to enter into an agreement which contained provisions relating to minimum distributions to shareholders by the taxpayer. The taxpayer and its shareholders intended that the taxpayer would make distributions under these provisions based on the shareholders' varying interests in the taxpayer's income in the current or immediately preceding taxable year or earlier if such earlier year's taxable income is adjusted after the taxpayer's original return for such earlier year is filed. The taxpayer and its shareholders intended that the varying interest distributions would include year-end and quarterly distributions that enable the shareholders to make timely estimated and final tax payments. In addition to these distributions, the taxpayer could declare dividends and make pro rata distributions to the shareholders based on the number of shares that the shareholders own as of a record date. The agreement also provided that the taxpayer would make the record date distributions in accordance with the corporate laws of the state, which provides that all shares of the same class are equal. The IRS ruled that the agreement did not create a second class of stock which would cause the S corporation status to terminate. **Ltr. Rul. 201306004, Sept. 20, 2012; Ltr. Rul. 201306005, Sept. 20, 2012.**

SUBSIDIARIES. The taxpayers were two corporations, one of which was an S corporation and the other was intended to qualify as a qualified subchapter S subsidiary. However, due to a procedural error, the S corporation filed Form 2553, *Election by a Small Business Corporation*, for the subsidiary instead of Form 8869, *Qualified Subchapter S Subsidiary Election*. The IRS granted an extension of time to file Form 8869. **Ltr. Rul. 201306020, Oct. 11, 2012**.

TAXABLE INCOME. The IRS has published information about taxable and nontaxable income. Most types of income are taxable, but some are not. Income can include money, property or services that a taxpayer receives. Examples of income that are usually not taxable include child support payments; gifts, bequests and inheritances; welfare benefits; damage awards for physical injury or sickness; cash rebates from a dealer or manufacturer for an item purchased; and reimbursements for qualified adoption expenses. Some income is not taxable except under certain conditions: (1) life insurance proceeds paid to a taxpayer because of an insured person's death are usually not taxable; however, if a taxpayer redeems a life insurance policy for cash, any amount that is more than the cost of the policy is taxable; (2) income a taxpayer gets from a qualified scholarship is normally not taxable; amounts a taxpayer used for certain costs, such as tuition and required course books, are not taxable, although amounts used for room and board are taxable. All income, such as wages and tips, is taxable unless the law specifically excludes it. This includes non-cash income from bartering - the exchange of property or services. Both parties must include the fair market value of goods or services received as income on their tax return. If a taxpayer received a refund, credit or offset of state or local income taxes in 2012, the taxpayer may be required to report this amount. If the taxpayer did not receive a 2012 Form 1099-G, check with the government agency that made the payments. That agency may have made the form available only in an electronic format. Taxpayers will need to get instructions from the agency to retrieve this document. A taxpayer must report any taxable refund received even if the taxpayer did not receive Form 1099-G. **IRS Tax Tip 2013-12**.

TAX RETURN PREPARERS. The IRS has updated two frequently asked questions (FAQs) documents with respect to preparer tax identification numbers (PTINs). The first document refers to who needs a PTIN, and the second answers questions concerning PTIN application or renewal. **2013ARD 035-1, Feb. 19, 2013**.

TIPS. The IRS has published a few important reminders about tip income: *Tips are taxable*. Individuals must pay federal income tax on any tips they receive. The value of non-cash tips, such as tickets, passes or other items of value are also subject to income tax. *Include all tips on the income tax return*. Taxpayers must include all tips that they receive during the year on their income tax return. This includes tips the taxpayer received directly from customers, tips added to credit cards and the taxpayer's share of tips received under a tip-splitting agreement with other employees. *Report tips to the employer*. If a taxpayer receives $20 or more in cash tips in any one month, the taxpayer must report the tips for that month to the employer. The employer is required to withhold federal income, Social Security and Medicare taxes on the reported tips. *Keep a daily log of tips*. Taxpayers can use IRS Publication 1244, *Employee's Daily Record of Tips and Report to Employer*, to record tips. For more information, see IRS Publication 1244 or Publication 531, *Reporting Tip Income*. **IRS Tax Tip 2013-16**.

IN THE NEWS

ACCESS TO IRS THROUGH SOCIAL WEB SITES. The IRS has added Tumblr to its list of social media platforms it is using to share IRS news and information. The new Tumblr platform at www.internalrevenueservice.tumblr.com provides another way for taxpayers to get current tax information when and where they want it. Tumblr is a micro-blogging site where users can access and share text, photos, videos and other information from their browser, smartphone, tablet or desktop. The new site shares information about important programs to help taxpayers, such as tax law changes, the Earned Income Tax Credit and Free File. The Tumblr site also makes it easier for IRS partners and others to share tax information they receive from the IRS. In addition to Tumblr, IRS also uses Social Media sites YouTube and Twitter, including @IRSnews or @IRSenEspanol. @IRStaxpros covers news for tax professionals; @RecruitmentIRS provides updates for job seekers. The Taxpayer Advocate Service has information available @YourVoiceAtIRS. Remember, to protect taxpayer privacy, the IRS only uses social media tools to share public information. IRS does not answer personal tax or account questions. Taxpayers should never post confidential information, like a Social Security number, on social media sites. **Special Edition Tax Tip 2013-04**.

BOGUS IRS E-MAILS. The IRS has this advice for anyone who receives an e-mail claiming to be from the IRS or directing the taxpayer to an IRS site: (1) do not reply to the message; (2) do not open any attachments because attachments may contain malicious code that will infect a taxpayer's computer; and (3) do not click on any links in a suspicious e-mail or phishing website and do not enter confidential information. Visit the IRS website and click on 'Identity Theft' at the bottom of the page for more information. The IRS does not initiate contact with taxpayers by e-mail or social media channels to request personal or financial information. The IRS never asks for detailed personal and financial information like PIN numbers, passwords or similar secret access information for credit card, bank or other financial accounts. The address of the official IRS website is www.irs.gov. Taxpayers should not be misled by sites claiming to be the IRS but ending in .com, .net, .org or anything other than .gov. If a taxpayer discovers a website that claims to be the IRS but the taxpayer suspects it is bogus, the taxpayer should not provide any personal information on the site and report the site to the IRS. If a taxpayer receives a phone call, fax or letter in the mail from an individual claiming to be from the IRS but the taxpayer suspects they are not an IRS employee, contact the IRS at 1-800-829-1040 to determine if the IRS has a legitimate need to contact the taxpayer. Report any bogus correspondence. Forward a suspicious e-mail to phishing@irs.gov; Taxpayers can help the IRS and other law enforcement agencies shut down these schemes. Visit the IRS.gov website and click on "Reporting Phishing" at the bottom of the page. **IRS Tax Tip 2013-19**.

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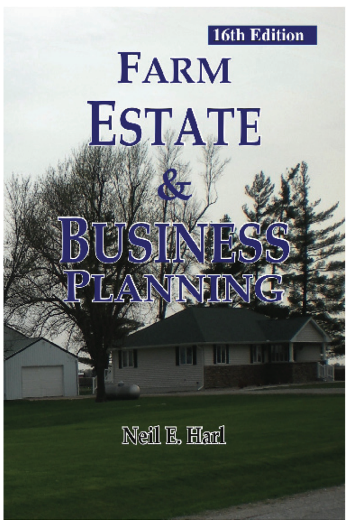

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